
Constitutional Equality: Mythical or Factual?

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Abstract:

A very significant character of this paper is, that the researcher has made her painstaking efforts to stave off the curving of work to any particular segment. Every discussion and findings made in this paper covers every under the classed and unheeded section of society. Through, this piece of work researcher tends to bundle up the segments which are devoid of privileges provided in policies of Equality. Constitution of India talks about Equality, but in the real sense, the concept of equality is sketchy as provided in the Constitution of India. Legal jurisprudence provided equality incomplete without the essence of Equity. A Copernican question arises in the implementation is that "whether mere treating everyone equal is sufficient to bring harmony in society?" A general understanding of the scenario presents a different opinion to harmonize society. Equality will work only if it followed with Equity, in furtherance of it India needs to formulate numerous laws in required area.

Keywords: *Equality, Equity, harmony, under classed segment.*

Introduction

India that is Bharat is a country with multifariousness in respect of *religion, caste, language even based on their nativity* also. THE Constitution of India is a supreme instrument or tool to administer the country and establish harmony in India. A soul essence of the constitution of India is found in the preamble of the constitution of India which ensures the Rule of people, Rule by people and Rule for People. Simultaneously it provides crucial and indispensable factors that can't be declined by anyone to the subjects of state, these factors are justice, *Liberty, Equality, and fraternity assuring the dignity*.

Though, the framers of the constitution of India made their head to toe efforts to form constitution in such a way so each essential of a democratic government could be fulfilled. India is a democratic country and the constitution of India also formed on such parameters so the democracy can be guaranteed in a standard manner. The cornerstone of the constitution of India is the Rule of Law viz. advocated by A.Y. Dicey, according to Dicey there must be three principles followed, Absolute Supremacy of law i.e. *lex autem non est super* (No one is above the law), Equality before law i.e. *aequalitatem coram lege* (Equality before the Law) and predominance of Legal spirit viz. Constitution of India. Whereas it is specifically provided that there must not be any distinction between two groups on any basis and no one must be provided with the special rights.ⁱ

Whether in the present scenario these essentials are fulfilling or not? A negative response shall be found after analyzing the grassroots scenario of Indian society which is not able to meet expectations as envisioned by the framers of the Constitution. Though, constitution formed by taking fundamental ideas from other countries' constitution, but our framers worked intelligently and applied only those formulas which could be easily applicable in our country so no group gets oppressed. Indian society is not as flat as other countries, much diversification can be observed due to the presence of many religions. Many transformations in our laws needed due to the changing need of society. As rightly said by jurist that law must be according to society and society is always dynamic.

Equality as A Corner Stone of India's Democracyⁱ

Doctrine of equality is essential factor of Rule of Law which permeates the Indian Constituionⁱ. UNIVERSAL DECLARATION OF HUMAN RIGHTS provides necessary implication of "*Equality before the Law*" and "*Equal Protection of the Law*" in all written Constitution those Guarantees the Fundamental Rights.ⁱ

Equality plays a significant and essential role in a Highly Democratic country; it is a core factor to achieve a standard quality of life and ensure equal chances to people of India. It ensures the governance that is responsible for the delivery of Justice to all the people on equal footing. It plays a key role in the improvement of the performance of government bodies by providing enough resources to all.

Equality consists of importance "to preserve the Dignified life of an individual", Dignified life stands for the respect of individual from another being. As well dignified life is an important human right and the State must ensure each and every one a dignified life. Despite Terming as Cornerstone of democracy it is not an ideal condition in India, various discrimination could be observed in Indian society.ⁱ

India is a country with many variations in culture and society, every society has its different set of rules and follows a unique way of life. Before constitution, conditions of some groups were vulnerable as the majority parts of India follows the patriarchal form of society where the woman was most deprived and vulnerable groups. They were just a source of procreation and to handle the internal matters like "*Chulha-Chauka*" and to take care of their husbands and in-laws. They were not considered as a separate identity and personality, it was a myth woman are nothing without man, but after the formation of the constitution of India, it provides the concept of equality and woman came to know about the real identity, they started to achieve their unique identity. Now, the Constitution of India becomes a backbone of all deprived and weaker groups of society with the essential feature of Equality.

Parallel paths of democracy and equality

Every proposal and decisions in a democratic world are supposed to be based on receptiveness and Equality. India is a democratic country it is very clear in every person's mind, but is there any option or way where we can imagine a democratic country without the basic feature of Equality in society. Democracy is nothing without the concept of equality a full flash democracy could only be achieved with the impartial implication of equality. Though, in India somewhere we found equality but it's the concept of equity which works to bring everybody on equal footing and provide each and everybody equal resources if some of them are not able to grab the opportunities due to their low level in society, equality with the soul of equity works to bring them as equal to other groups so that they can grab opportunities and sources of livelihood.

Now, India has achieved an essential feature of democracy all over the world where India holds a unique identity and Good governance system which is a Democratic form of government where democracy and equality walk parallel and give strong roots

to the constitution of India for the better administration of country. Hence, in a genuinely democratic country, Equality and democracy must go hand in hand

Doctrine of Reasonableness

Though, Constitution of India follows the principle of "Rule of Law" but there are certain exceptions to the "Rule of Law" which breaks the absolute application of Rule of Law. Firstly, the powers of private citizens are not equivalent to the powers of official Entities. This expression doesn't mean that the crime done by officials is ignorable; they shall be subject to the punishment against violation of law or abuse of powers.ⁱ Some classes of a country need to be treated in specific category so they shall be governed by special rules and laws.ⁱ Thirdly, executive and legislations have special powers to form laws and act in "as deem fit" or "if they are satisfied", so they can form rules, regulations, and laws without any oppression.ⁱ

However, Article 15(3), 15(4), 15(5), 15(6) and Article 16 of The Constitution of India, fall under the exceptions to The Rule of Law.ⁱ

Special provisions for Woman and Children in Criminal Laws regarding their arrest, detention, and rape are also falling under this, provisions shall not be considered as "Discriminatory". Article 14, 15 and 16 are elements of an Individual Code of Constitutional guarantee addendum each other.ⁱ Equality is declared as a basic feature of the Constitution, as the preamble of the constitution of India itself gives equality as an integral part of the Constitution of India which couldn't be separated from the Constitution of India, even any amendment which bears off the Equality is invalid. It wouldn't be worthless to say that Article 368 also works within the circumference of the Doctrine of Equality.ⁱ Equality is the essential feature of Democracy accordingly it's the intrinsic feature of The Constitution of India.ⁱ

Equity accompanied with Equality clearly reflects in Constitution of India which time to time picturized by Judiciary, "Equal protection of Laws", is positive content, it doesn't indicate the ideological application of same laws to each group of society, Copernican part is that every law must be applied equally on people those who are standing in the same circumstances "Equality before the law" is dynamic and has many facets and one of the facets is that there shall not be the privileged treatment to any group and no one is above the law, however, it's the duty of the state to bring every sect of society on a similar level for the similar treatment.ⁱ

All persons are not equal by nature, attainment or circumstances and therefore, machinelike application of similar laws on every sect may result in injustice. Situational

needs of society according to their circumstances or conditions should be paramount in consideration before the formulation and implementation of laws.ⁱ

Now, a major question arises here, what are the limitations and restricted area for application of "Doctrine of Reasonableness", to remove the chaos in the legislation and formulation of policies, judiciary pronounced test for the reasonableness or reasonable classification of persons, objects, and transactions by the Legislative authorities to achieve peculiar ends. Classification to reasonableness must meet following tests: -

1. There must be intelligible differentia, genuine and substantial distinction, which distinguishes persons and groups together in the class from others who left behind it.
2. Differentia must be accompanied with rationality and reasonable nexus with the goal sought to be accomplished by the statute in question.ⁱ

Equality and Equity Commingles in the Constitution of India

"Equality without equity is like a body without heart"

Implications and formation of laws to ensure equality are not enough for a tight-laced administration of a state, equality must be enshrined with Equity. Many times, these two concepts overlapped each other into people's brains, a rattling thin line found between these two terms. If we understand it in societal purview, the difference between these two couldn't be explained but the basic concept is slightly different. Equality usually connotes to isochronal opportunities and equivalent endorsement for all the sects of society whereas Equity is a second step in the development which bring every sect on the same level and then provide them various support depending upon their needs to ensure the greatest level of fairness in society.ⁱ Whereas, it won't be worthless to saying that though specifically equality is mentioned into Article 14- Article 18 essence of the constitution says " *Equality, Equity, Justice and Good Consience are when coalesce with each other, form the true Spirit of Constitution.*" If any of the substance gets separated, the constitution shall become only a physical document which wasn't the true policy of the Indian Constitution's framers.

A Bullwock of Socially Backward and Economically Weaker

These two terms many times overlapped each other but in fact and from the purview of Constitution these two terms stand on different footboards. Socially backward are those who are disadvantaged in society due to their belongingness to a particular caste or class. They always deprived of the basic amenities of life. In India, Social Stratification

placed based on caste which ultimately gives birth to Untouchability and imbalance situation in society.

Whereas, economically weaker are people of the category who can't earn that much to fulfill basic needs of live hood. Classification of society on an economic basis is the essential need of India to increase status in the international world. Whether the Caste is the only element in the Socially Backward Group, definitely answer shall be negative because several groups in society are also on a lower level than others and completely ignored and deprived. Women and Transgender are the burning examples of this category who are extremely weaker and ignored group in society. What are the reasons still after the 1950 India didn't achieve desired results as envisioned by Dr. Ambedkar. In today's days, India doesn't need Policies and Laws on Social basis but it needs on an economic basis to bring harmony in society. To fulfill the needs of Preamble of the constitution of India viz. Justice, Liberty, Equality and Fraternity, legislative must take actions through Policies for economic weakens not the socially backward.

Indian Legal System's Conjectural Society

The indispensable feature of the Indian Legal System is that it must conform to the Constitution of India. Laws violate the fundamental rules and road map of the Constitution shall be Void *ab initio*. Whether the Indian Legal System solely in conformity with the Constitution or not is the challenging question for the Judiciary. Several times cases arise in front of the judiciary for which no perfect set of rules have been formed, now it's the complicated challenge for the judiciary to apply laws against the way as provided. Judiciary's foremost role also plays as an interpreter of Indian laws, but within the limitation provided. A situation like Rape with Male and trans-genders, no standard law has been made to save the victim. Transgender are described as an umbrella term for the group of persons who has a different gender identity, gender expression or behavior which is not conforms to their *Biological Sex*.ⁱ

Gender identity is one of the most basic facets of life which refers to an unalienable sense of being man, woman or others.ⁱ Guidelines has been provided to legislate the definite laws and measures to prevent and extinguish the discrimination in the public and private sectors on the bases of their sexual identity and gender specification. it is the primary responsibility of the State to ensure the equal protection of such groupsⁱ

It would be worthy enough to mention here a term viz. "Equality of Conditions", the term was coined by Alexis de Tocquevilleⁱ where he has mentioned that "equality of

condition” is the absence of enormous differences of *Economic, social and cultural character* among the people of a society. It is easy to observe that where social inequalities and division in society is deeper, democracy becomes possible or improbable, but this is not as easy to achieve and maintain as well. Equality is democracy’s lead Goal. Freedom, equality, respect the others emotions, diversification, participation in the selection of government and public affairs, are some of the values and aims that every absolute and genuine democracy shall always pursue.

There are other countries also who follows the democratic form of government, but in the respect of India the scenario is different Indian government, laws and the administration process are slightly different than other countries due to the uniqueness of India. Societal structure of India is much varied than the other countries, for the sake of convenience to the Public and for a better administration Indian laws are molded to fit in society and their need.

Rational concept of Equality in American Constitution and 14th Amendment

Discussing the 14th amendment and the importance of equality in America, the role of Justice Oliver Wendell Holmes can’t be declined, who was an American Jurist and Associate Justice of Supreme Court of US. Before 14th amendment in the constitution of America government of US and Courts were more concerned to make secure underneath the economic policies of Laissez-faire, and rejecting the legislative support to assuage the social problems. His theory of Legal Realism has much significance in American constitution and further into policy making for the development of public. However, the current system of interpreting the equal protection clause was his main concern into American Legal System. Justice Holms emphasized on race-based government classification as a great remedy to economic subordination to the racial minorities. Justice Holmes implanted the Realist Theory into American Legal Framework.ⁱ Whereas on the other hand Tocqueville theory towards the problem of slavery of Negroes and after the making prohibition on slavery was bit different, i.e. he was not on view to accept a situation here two foreign communities can live on same land on dame footing peacefully.ⁱ Problem of majority of Whites and minorities of Negroes were much serious in America.

Three major amendments after the wake of civil war changed the complete face of America into A Greater America, these three amendments to the Constitution were in 1865 i.e. Abolishment of Slavery, in 1868 i.e. making the freed slaves into the citizens of America and in 1870 fifteenth amendment giving the vote to men of any race. The crucial question aroused during this time was that what role would be played by the

recently freed Four Million Slaves in American white majority life. These amendments and significantly the fourteenth amendments placed with the promise to former slaves that they would be provided with the equal rights and better lives which taken more than a century to fulfill. Fourteenth Amendment had most far reaching effects on the meaning of constitution. It bestowed both National and State citizenship upon birth to protecting the natural rights of newly freed slaves. Finally, the amendment made interpretation for the application of most provisions in the Bill of Rights to the States same as the Government of Nation. Final stage fourteenth amendment played key role into introducing the Idea of Equality and "Equal protection of laws". Fourteenth amendment brought a new Constitution that fortified the rights throughout the America and preserve equality as a Constitutional value.ⁱ

Conclusion

India, unremittingly working to achieve the desired goals of Constitution framers but there are still some loopholes could be observed where Indian constitution fails to accomplish the better results for the people's welfare. Equality is a term defined for the development of a state and essence falls under the soul of Constitution. Every law must be according to the structure of society, majority of Indian society lies into rural areas and even after the scrupulous elbow grease of government, illiteracy and unawareness are major problems in India. People are not aware about their rights, they even don't know what the constitution is, all the powers lies under the arms of government as they implied rules people follows. Another major problem is the Ideal Language of Constitution and other laws where a common man could never understand without the help of professional. Many reformatations are required in the area of Criminal and civil laws as the society forms and needs of society has changed with time, still India is following the white-haired bundles of laws. Judiciary of India is continuously adjudicating towards the betterment of society amendments into criminal laws now days are burning example of the role of judiciary in the administration of Equality enshrined under Constitution of India.

Creamy layer concept must be applicable to every group, for whom special provisions are made to uplift them so that the needy people get benefited through the policies. Only formation of Equality based laws wouldn't be enough till the policies for the better implication of that laws couldn't be formed. Proper monitoring of the implication of laws and better amendments into present laws according to the accomplished target should also be made. Gradually, with the development of society laws must be tilted towards the economically weaker rather than the socially based

criteria. Constitution has formed according to circumstances of that era, but now so many developments have taken place; with the change of society needs Constitution provisions also be amended for the betterment of society. To fulfill each essential feature of Constitution layers of Constitutional provisions must walk parallel with the Dynamic Indian Society.