



Principal F Equality & the Constitution of India

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ABSTRACT:

Right to equality is embodied in a series of articles from Article 14 to 18 of the Constitution of India. Article 14 contains the principle of rule of law and Articles 15, 16, 17 and 18 contain the application of this principle. The Preamble to the Constitution of India provides for equality of status and opportunity. Equality forms part of the basic structure of the Constitution of India. The concept of equality has been derived from Preamble of the Indian Constitution which guarantees equality of status and opportunity and Article 14 of the Indian Constitution which states that “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 first expression ‘equality before the law’ which is taken from the English common law, is a declaration of equality of all persons within the territory of India, implying thereby the absence of any privilege in favour of any individual. The purpose of this research is to identify the general principle of “right to equality” the word “Right to equality” need no explanation because it tells its meaning itself. and it is one of our fundamental rights.

INTRODUCTION:

Equality means in one sense that adequate opportunities are laid open to all. By adequate opportunities we cannot imply equal opportunities in a sense that implies identity of original chance. Equality is not an imperative to treat in identical ways for men who are unequal in their physical or intellectual attainments. It is a policy of equality of concern or consideration for men whose different needs may require different treatment. It is not a mechanical policy of equal opportunity for everyone at any time and in all respects. It is equality of opportunity for all individuals to develop whatever personal and socially desirable talents they possess and to make whatever unique contributions which their capacities permit. It is not a demand for absolute uniformity of living conditions or even for arithmetically equal compensation for socially useful work. It is not a policy of restricting the freedom of being different or becoming different. It is a policy of encouraging the freedom to be different or becoming the different. It is a policy of encouraging the freedom to be different, restricting

only that exercise of freedom which converts talents or possession into a monopoly that frustrates the emergence of other free personalities. Equality in the dynamic sense means reduction of the harshest forms of inequality.* “A theory of justice” demands the priority of equality in a distributive sense and setting up of social system so that no one gains or losses from his arbitrary place in the society without giving or receiving compensatory advantages in return.† His basic principle of justice is “all social primary goods- liberty and opportunity, income and wealth, and the basis of self- respect are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of least favoured one of the essential element of Rawl’s conception of justice is what he calls the principle of redress.”

RESERVATION

Reservation is a policy designed to redress past discrimination against lower classes and minority groups through measures to improve their economic and educational opportunities. Reservation is an attempt to promote equal opportunity. It is often instituted in government and educational settings to ensure that minority groups within a society are included in all programs. The justification for reservation is to compensate for past discrimination, persecution or exploitation by the ruling class of a culture or to address existing discrimination. The principle of affirmative action is to promote social equality through the preferential treatment of socioeconomically disadvantaged people. More over the basic aim of reservation is to create social equality. Social equality is a social state of affairs in which all people within a specific society or isolated group have the same status in a certain respect. At the very least, social equality includes equal rights under the law, such as security, voting rights, freedom of speech and assembly, and the extent of property rights. However, it also includes access to education, health care and other social securities. It also includes equal opportunities and obligations, and so involves the whole society. Social equality refers to social, rather than economic, or income equality.‡

MANDAL COMMISSION REPORT

*T.N. Kitchlu, Scheduled Castes and the Problem of Equality (ed.1st 1972) p. 144.

† John Rawls book

‡<http://www.legalservicesindia.com/article/479/Reservation-&-principle-of-equality.html> visited on 3rd March, 2018

The Mandal Commission was established in India in 1979 by the Janata Party government under Prime Minister Morarji Desai with a mandate to “identify the socially or educationally backward.” It was headed by Indian parliamentarian **Bindheshwari Prasad Mandal** to consider the question of seat reservations and quotas for people to redress caste discrimination, and used eleven social, economic, and educational indicators to determine backwardness. In 1980, the commission's report affirmed the affirmative action practice under Indian law whereby members of lower castes (known as Other Backward Classes (OBC) and Scheduled Castes and Tribes) were given exclusive access to a certain portion of government jobs and slots in public universities, and recommended changes to these quotas, increasing them by 27% to 49.5%. This commission was set up under article 340 for the purpose of articles like 15 and 16.[§]

RELATION BETWEEN RESERVATION AND PRINCIPLE OF EQUALITY

Equality has been promised by State under Article 14 of the Indian Constitution and Article 14 is considered as the soul of the Indian Constitution because without equality no country can be considered as republic and it is the need of equality which have forced human beings to come under state so that they can get security, equal protection of law and equality in all aspects. In our Preamble we have adopted the word equality from French Revolution which itself shows the aims of our Constitution and Article 14 further is a step forward towards the accomplishment of that aim. Equality itself means that like should be treated alike and not unlike should be treated like. That is why Article 14 permits reasonable classification between likes and unlike so that unlike should be given special treatment to bring them on the equal footing with the likes and in fact identical treatment in unequal circumstances would itself amount to inequality. Goal of equality will not be considered to be achieved till everyone will be on the equal footing. Thus, idea to attain equality has given birth to the concept of reservation or affirmative action. Reservation is a special treatment given to the unlike till they come on the equal footing with the likes in the society. Reservation is a concept developed with a view to provide special help to the weak so that they can overcome their weakness and can compete with the strong. In landmark judgments like **D.V. Bakshi v. Union of India** and **Air India v. Nargesh Mirza** Supreme Court has given wonderful Judgments which proves that which has proved that inequality anywhere

[§] Ibid-3



will never be tolerated and therefore Judgments of these cases have established new landmarks in the concept of equality. Equality is a state of complete justice and in order to attain it reservation is a powerful remedy. Reservation have proved to be highly successful in many countries for e.g. U.S. has affirmative action for blacks and in various other countries reservation is playing major role in narrowing the gap between different classes.**

CONCLUSION:

The principle of equality embodied in the Constitution forms the bedrock of our democratic setup. In an incredibly diverse society like India, the values like social justice, equality, liberty and fraternity cherished by the Constitution act as the binding force. The Indian judiciary has been and continues to uphold these core values for the collective advancement of the society and ensuring justice for every individual. Indian reservation system has been a major success in improving the position of the Backward Classes and past decades have shown remarkable development in position of Backward and Oppressed Classes in India. Though our reservation system is an outcome of huge amount of research by commissions and Government agencies like Mandal Commission etc but even then, somewhere our system is lacking on the applicability part also some fault is there in identification of the Backward Classes because despite of giving so many years of reservation their position have not been developed to that extent as it should have been. Finally, the combined effort of Article 14 and 15 is not that the state cannot pass unequal laws but if it does pass unequal laws, the inequality must be based on some reasonable ground and that due to Art. 15(1), i.e., religion, race, caste, sex or place of birth cannot be grounds for justice but only the actual economic position of the family or the individual if no one is there to support oneself, shall be the correct and just for the reservation system.

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4. <http://www.legalservicesindia.com/article/479/Reservation-&-principle-of-equality.html>
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