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# A Re-Look At The Mandate Of Equality

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## Abstract

Some measure of discrimination among people is legitimate, and even mandated under the conception of a just society. The difficulty, however, arises from the menacing effects of longstanding illegitimate and immoral bases for discriminating among people such as, gender, race, and class. Equality is a much contested concept, and undoubtedly can be judged by comparing some particular aspect of a person with same aspect of another person. Hence, the measurement of equality solely depends on choice of the variable, that is, income, wealth, status, opportunities, freedom, dignity, rights etc., in terms of which comparisons are made. The idea of equality was even conceived by the ancient Greek philosophers around fifth century B.C. Political Philosophers like John Locke, Rousseau, and Tom Paine have advocated equality as constituting the very basic natural right of man. Natural equality of man was practically recognised in the 18<sup>th</sup> century's Declaration of the Rights of Man issued by the National Assembly of France and likewise in the United States Declaration of Independence. History testifies that by the time the Constitution was adopted, India was a society divided deeply along the religious, caste, sex, language and many other lines. With the adoption of the Constitution, however, it became a constitutional mandate for the State to secure for all Justice,

*Liberty, Equality and Fraternity, the very ideals, upon which the Constitution is founded. In this backdrop, the present study seeks to trace the concept of equality as conceived by various authorities and under various international instruments. The study, in nutshell, also seeks to examine the constitutional provisions.*

**Keywords:** Equality, Justice and Liberty

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## Introduction and Background

All men are not created equal. This assertion seems wrong, even immoral, as modern liberal thought has established the inherent, equal worth of every person. But true equality among people cannot be achieved because there are natural inequalities among us. We recognise that one individual may have greater inherent literary or athletic talent than another or superior beauty or strength. These talents, in a just society, should be rewarded even though they have no moral significance.

Therefore, some measure of discrimination among people is legitimate, and even mandated under the conception of a just society<sup>1</sup>. The difficulty, however, arises from the menacing effects of longstanding illegitimate and immoral bases for discriminating among people such as, gender, race, and class. Over time, these differences

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<sup>1</sup>N. Lillibridge, "The Promise of Equality: A Comparative Analysis of the Constitutional Guarantees of Equality in India and the United States", 13 *WMBRJ* 1301 (2005).

compound, so that the child born into a relatively privileged family often gains certain advantages without any demonstration of superior talent, ability, or moral worthiness<sup>2</sup>.

Natural *equality* of man was practically recognised in the Declaration of the Rights of Man issued by the National Assembly of France. It said: “Men are born, and always continue, free and equal in respect of their rights”. A similar statement is found in the United States Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal”. Universal Declaration of Human Rights proclaims: “the inherent freedom and equality in dignity and rights of all human beings”<sup>3</sup>.

The idea of *equality* was even conceived by the ancient Greek philosophers around fifth century B.C. They gave a conception of universal law for all mankind under which all men are equal and which is binding on all people. They stressed the ideas of individual worth, moral duty and universal brotherhood<sup>4</sup>. Political Philosophers like John Locke, Rousseau, and Tom Paine have advocated *equality* as constituting the very basic natural right of man.

History testifies that by the time the Constitution was adopted, India was a society divided deeply along the religious, caste, sex, language and many other lines. The most disreputable among the division was the practice of untouchability, relegating a class of people to a status of virtual slavery. And somehow law was acquiescent in

certain area, or was silent in certain sphere permitting or perpetuating the division of society. More specifically law was whether customary or otherwise, more actively used as an instrument for the continuance of the said division. As to rights, during those days, it was an exclusive preserve of a handful few. And religious practices were aiding and assisting such privileges and subjecting other classes of people to dictates of such privileged ones. To be very specific status of women was mostly deploring, they were treated as inferior on the basis of sex and denied a dignified existence, and in such perpetuation religion had the foremost role.

With the adoption of the Constitution, however, it became a constitutional mandate for the State to secure for all *Justice, Liberty, Equality and Fraternity*, the very ideals, upon which the Constitution is founded. In this backdrop, the present study made an attempt to trace and examine the concept of *equality* as conceived by various authorities and under international and domestic instruments.

### **Objectives Of The Study**

The present study, thus, undertaken with the following aims and objectives:

- To define and analyse the concept of “*equality*”;
- To trace as to how the concept of “*equality*” is conceived by various authorities;
- To trace the concept as proclaimed under various international instruments; and
- To examine the constitutional provisions in Indian context.

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<sup>2</sup> *Ibid.*

<sup>3</sup> Universal Declaration of Human Rights, art. 1.

<sup>4</sup> N. Aggarwal, *Jurisprudence (Legal Theory)* 296 (Central Law Publications, Allahabad, 10<sup>th</sup> edn., 2014).

- To introspect judicial responses on the mandate.

## Methodology

The present study is an analytical construct, and data for this study have been collected from diversified sources which include existing *secondary* sources such as, books, research papers, publications of relevant national and international organisations and other published web based resources. The data gathered from various sources have been reviewed and analysed thoroughly using, wherever needed, illustrations and/or case studies, and findings thereon are recorded sequentially in line with objectives and purposes set out in the study.

## Conceptual Framework

Undoubtedly, human beings differ from each other in many different ways. Not only do they differ in their social circumstances, but also in their personal characteristics, physical and mental abilities. The important question to be addressed, therefore, is: in what sense can all human beings be regarded as equal despite the differences in their physical, psychological and emotional capacities.

*Equality*, undoubtedly, can be judged by comparing some particular aspect of a person with same aspect of another person. Hence, the measurement of *equality* solely depends on choice of the variable, that is, income, wealth, status, opportunities, freedom, dignity, rights etc., in terms of which comparisons are made.

Consequently, *equality* is a much contested concept. Our first task hence is to provide a clear definition of *equality* in the face of widespread conceptions about its meaning as a political, economic, social or moral idea. The term “*equality*” signifies a qualitative relationship. It essentially signifies correspondence between a group of different objects, persons, processes or circumstances that share the same attributes in at least one respect, and not necessarily in all respects. For example, some people may have *equality* in terms of income or wealth but they may not be equal with respect to happiness or opportunities or so on.

Barker comments, “Equality, after all is a derivative value. It is derived from the supreme value of the development of personality in each alike and equally, but each along its own different line and of its own separate motion”.

The ideal of *equality* is basically a leveling process. In its negative aspect it means absence of any discrimination based on class, caste, creed, race, religion, gender etc., yet *equality* has positive connotation as well, thus, in its positive aspect it stands for the provision of adequate opportunities.

Broadly speaking, we may comprehend *equality* in terms of civil *equality* (that is, equal civil rights to all citizens); political *equality* (equal political rights to all and equal access to seats of political power); social *equality* (*equality* of status and absence of discrimination in the eyes of law on account of one’s race, colour, caste, creed, sex and place of birth; economic *equality* (equal

access to social goods, adequate *equality* in terms of income, wealth and other economic opportunities).

### **International Mandate Of Equality**

Preamble to the United Nations Charter proclaims to reaffirm faith in *equality*. It declares: “we the people of the United Nations determined ... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women ...”

Article 1 of the Universal Declaration of Human Rights again states on *equality*. It proclaims: “the inherent freedom and equality in dignity and rights of all human beings”. Article 2 of the Declaration states that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as, race, colour, sex, language, religion, political opinion etc.

Thus from the perspective of *equality*, it is evident that the international instruments, be it Charter of the United Nations, or Universal Declaration of Human Rights, basically seeking to ensure its effective recognition and observance in terms of dignity and rights.

The International Labour Organisation (ILO)’s mandate of *equality*, however, rests upon opportunities *for* its goal is to promote equal opportunities for both men and women. The four ILO key Conventions in this behalf are the Equal Remuneration Convention (No. 100), Discrimination (Employment and Occupation) Convention (No. 111), Workers with Family

Responsibilities Convention (No. 156), and Maternity Protection Convention (No. 183)<sup>5</sup>.

ILO’s gender *equality* mandate is too set in the context of a range of international instruments advancing *equality* between men and women. These include, *inter alia*, Charter of the United Nations, 1967 Declaration on the Elimination of Discrimination Against Women, 1979 Convention on the Elimination of All Forms of Discrimination Against Women, 1997 United Nations Economic and Social Council’s Agreed Conclusions on Gender Mainstreaming, 1995 Beijing Platform for Action and its Follow-Up, Millennium Development Goals, and Sustainable Development Goals.

### **Constitutional Mandate Of Equality**

The ancient India legal order was based on The ancient India legal order was based on sovereignty of *Dharma*. Ancient *Dharma* did not discriminate between persons on the basis of his religious following, caste or creed. It said that *Dharma* is all pervading as expressed in the maxim *Satyam Shivam Sundaram* namely, it embraces all truth, and all beauties of life

Thus, the principle of *equality* was well enshrined in the ancient law of India. But the concept of *equality* as envisaged in *Smritis* and *Dharmashastra* did not mean mathematical *equality*. Instead, it referred to *equality* in the matter of protection and security to every person. The functioning of the society was modeled on

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<sup>5</sup>ILO and Gender Equality, available at <https://ilo.org/gender/Aboutus/ILOandGenderEquality/lang-en/> (visited on 12/11/2018).

the principle of division of labour. The *Varna Vyavastha* as it is misunderstood and exploited today for personal gain was not meant to divide the society into different classes but it was devised on the sound economic principle of division of labour<sup>6</sup>.

Advent of British rule in India, however, brought about radical changes in the then existing legal system. During British rule, plenty of changes were made in the economic and social structures of Indian society. Though the quality of life of women during this period remained more or less the same, some substantial progress was, however, achieved in eliminating inequalities between men and women. Britishers established their supremacy over the Indian people. Britishers recognised that there was existence of legal system prior to their arrival, yet gradually succeeded in implanting their legal system. Equality before law as we understand under Indian Constitution is an aspect of Rule of law understood under British system.

However, the struggle for independence was over by 15<sup>th</sup> August 1947. But the attainment of independence was not an end in itself. It was only the beginning of struggle, that is, the struggle to live as an independent nation and also to establish democracy based on the ideas of *Justice, Liberty, Equality* and *Fraternity*. The need of the Constitution forming the basic law of the land for the realisation of these ideas was paramount. Therefore, one of the first tasks undertaken by independent India was framing the Constitution.

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<sup>6</sup>N. V. Paranjape, *Indian Legal & Constitutional History* 8-10 (Central Law Agency, Allahabad, 2015).

The ideals of *Justice, Liberty, Equality* and *Fraternity* are enshrined in the Preamble itself. In Part III of the Constitution these concepts are enshrined as fundamental rights made enforceable which are virtually identical in terms with the Universal Declaration of Human Rights. The ideal of *equality* which by then became an international mandate was recognised under the Constitution of India. Among others, it was made a goal by the founding fathers before the Indian State, which is evident from the Preamble itself *for* it proclaims: to secure to all citizens “*Equality of Status and Opportunity*”. By this solemn declaration *equality* became foundational goal of the Indian State.

Article 14<sup>7</sup> of the Constitution embodies the general principles of *equality before law* and prohibits unreasonable discrimination between persons. It lays down that “the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India”.

Thus, it caters to the object set out in the preamble towards achieving a classless egalitarian society by adopting two distinct concept of *equality* borrowed from two different leading legal systems, which at last meet at a particular point to bring about *equality* in the society. The concept “*equality before law*” is of English origin seeks to eliminate special privilege and establish supremacy of law which is an off shoot of Rule of Law. And the concept “*equal protection of the laws*”, however, has been inspired by the 14th Amendment to the American Constitution.

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<sup>7</sup> INDIA CONST. art. 14.

While *equality before law* is a somewhat negative concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual, and also equal subjection of all classes to the ordinary law of the land, that is, among equals the law should be equal and should be equally administered “*like should be treated alike*”. On the other, *equal protection of the laws* is a positive concept implying *equality* of treatment in equal circumstances, that is, all persons similarly circumstanced shall be treated alike both in the privileges conferred and liabilities imposed by the laws “*like should be treated alike and not that unlike should be treated alike*”.

Courts in India have upheld legislation containing apparently discriminatory provision where discrimination is based on a reasonable basis. By reasonable, it is meant that the classification must not be arbitrary, but must be rational<sup>8</sup>. However, the Hon’ble Supreme Court has drifted from the traditional concept of *equality* which was based on reasonable classification and has laid down new concept of *equality*. Bhagwati, J., while delivering the judgment<sup>9</sup> propounded the new concept of *equality* in the following words:

“*Equality is a dynamic concept with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinal limits. From a positivistic point of view, equality is antithesis to arbitrariness*”.

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<sup>8</sup>Chiranjit Lal v. Union of India, AIR 1951 SC 41; Dhirendra Kumar Mandal v. Superintendent and Legal Remembrancer of Legal Affairs, AIR 1954 SC 424; K. Thimmappa v. Chairman, Central Board of Directors SBI, AIR 2001 SC 467.

<sup>9</sup>E. P. Royappa v. State of Tamil Nadu, AIR 1974 SC 555.

In *Maneka Gandhi* case<sup>10</sup>, Bhagwati, J., again quoted the new concept of *equality* propounded by him in *E.P Royappa* case, thus:

“.... *Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinal limits. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence*”.

In *International Airport Authority* case<sup>11</sup>, Bhagwati, J., reiterated the same principle in the following words:

“*It must ... therefore, now be taken to be well-settled that what Article 14 strikes at is arbitrariness because an action that is arbitrary, must necessarily involve negation of equality*”.

Whatever be their content, but one dominant idea common to both *equality before law* and *equal protection of the laws* is that of attainment of equal justice. Both the expressions are integral to the concept of *equality*. Patanjali Shastri, C. J., observed<sup>12</sup>:

“*The second expression is corollary of the first and it is difficult to imagine a situation in which the violation of equal protection of laws will not be violation of equality before law*”.

Article 14 contains the general principle as to right to *equality* outlawing discrimination in general way. The protection of article 14 is

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<sup>10</sup> Maneka Gandhi v. Union of India, AIR 1978 SC 597.

<sup>11</sup> R. D. Shetty v. Airport Authority, AIR 1979 SC 1628.

<sup>12</sup> State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75.

extended to all persons- citizens and non citizens. The Supreme Court itself maintained no distinction between the two expressions. It did not consider the first expression for its substantive application as distinct from the second. It is evident from the decided cases that sometimes the Supreme Court referred to both the expressions,<sup>13</sup> sometimes to the first<sup>14</sup> or the second<sup>15</sup> only, and sometimes to the article itself,<sup>16</sup> always meaning the same thing, that is, equal protection of the laws. This position was made clear by the Court in *State of Uttar Pradesh v. Deoman Upadhyaya*<sup>17</sup> in which it observed:

“Article 14 ... is adopted from the last clause of Section 1 of the 14<sup>th</sup> Amendment of the Constitution of the United States of America, and it may reasonably be assumed that our Constituent Assembly when it enshrined the guarantee of equal protection of the laws in our Constitution, was aware of its content delimited by judicial interpretation in the United State of America ...”<sup>18</sup>

That to effectuate this general principle more specific and elaborate provisions, that is, Articles 15, 16, 17 and 18 have been made to cover specific discriminatory situations as offshoots of general principle contained in Article 14.

Article 15<sup>19</sup> secures citizens from every sort of discrimination by the State, on specific grounds of religion, race, caste, sex or place of birth or any of them. However, this Article does not prevent the State from making any special provisions for women or children. The new clause 5 provides that nothing in Article 15<sup>20</sup> or in sub-clause (g) of clause (1) of Article 19<sup>21</sup> shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally Backward classes of citizens or for the Scheduled Caste or the Scheduled Tribes in so far as such special provisions relate to the admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30.<sup>22</sup>

The above amendment has been enacted to nullify the effect of the three decisions of the Supreme Court, that is, *T.M. Pai Foundation v. State of Karnataka*,<sup>23</sup> *Islamic Academy v. State of Karnataka*<sup>24</sup> and *P.A. Inamdar v. State of Maharashtra*.<sup>25</sup> In *T.M. Pai Foundation* and *P.A. Inamdar* cases it has been held that the State cannot make reservation of seats in admissions in privately run educational institutions.

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<sup>13</sup> *Bidi Supply v. Union of India*, AIR 1956 SC 479

<sup>14</sup> *Bashesar Nath v. Commissioner of Income Tax*, AIR 1959 SC 149.

<sup>15</sup> *Lachmandas Kewalram Ahuja v. State of Bombay*, AIR 1952 SC 235.

<sup>16</sup> *Jyoti Prasad v. Administrator for the Union Territory of Delhi*, AIR 1961 SC 1602.

<sup>17</sup> *State of Uttar Pradesh v. Deoman Upadhyaya* AIR 1960 SC 1125.

<sup>18</sup> *Id.*

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<sup>19</sup> INDIA CONST. art. 15.

<sup>20</sup> INDIA CONST. art. 15, cl. 5.

<sup>21</sup> INDIA CONST. art. 19, cl. 1.

<sup>22</sup> INDIA CONST. art. 30, cl. 1.

<sup>23</sup> *T.M. Pai Foundation v. State of Karnataka* AIR 2003 SC 355.

<sup>24</sup> *Islamic Academy v. State of Karnataka* AIR 2003 SC 3724.

<sup>25</sup> *P.A. Inamdar v. State of Maharashtra* AIR 2005 SC 3226.

Article 16<sup>26</sup> assures all citizens *equality* of opportunity in matters of public employment and prevents the State from any sort of discrimination on specific grounds of religion, race, caste, sex, descent, place of birth, residence or any of them, yet this Article provides autonomy to State to grant special provisions for the backward classes, Scheduled Castes and Scheduled Tribes for posts under the State, and also reservation of posts for people of a certain religion or belonging to a certain denomination in a religious or denominational institution.

In *Air India v. Nargesh Mirza*,<sup>27</sup> the petitioner challenged the validity of the regulations under which they could retire at the age of 35 years or if they got married within four years of their service or on first pregnancy on the ground that they were discriminatory and violative of Articles 14, 15 and 16 of the Constitution. While the Court held that the provisions on pregnancy bar and the retirement and the option conferred on Managing Director were unconstitutional as being unreasonable and arbitrary and violative of Article 14, it upheld the validity of the provision prohibiting the Air Hostess to marry within four years of their service as there was no unreasonable and arbitrariness in that provision. It is by all standards a “very sound and salutary provision”.

In a landmark judgment in *M. Nagraj v. Union of India*,<sup>28</sup> a five judge Bench of the Supreme Court has unanimously held that the constitutional amendments by which Article 16 (4A) and 16

(4B) have been inserted flow from Article 16 (4) and do not alter basic structure of Article 16 (4). The petitioners have challenged the constitutional validity of the Constitutional 85<sup>th</sup> Amendment which retrospectively provided reservation in promotion as violative of the principle of basic structure of the Constitution as laid by the Supreme Court in *Kesavananda Bharati v. State of Kerala*.<sup>29</sup> They also said that by providing reservation in promotion with consequential seniority would impair efficiency in administration as provided in Article 335 of the Constitution. Thus, the main issue before the Court was whether the impugned constitutional amendments violate the principle of basic structure and thereby obliterate the constitutional limitation requirements laid down by this principle on the power of Parliament. Thus, the main issue in the case concerned the extent of reservation.

On the other, Article 17<sup>30</sup> abolishes untouchability, yet Article 18<sup>31</sup> abolishes use of titles other than military and academic distinction. So, Article 14 constitutes the genus whereas specific provisions stated above are its species. The Constitution under Article 32 as well as under Article 226 provides for remedy on account of infringement of such rights. The Hon’ble Supreme Court observed<sup>32</sup>:

*“The Rule of Law embodied in Article 14 is the basic feature of the Constitution and hence, it*

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<sup>26</sup> INDIA CONST. art. 16.

<sup>27</sup> *Air India v. Nargesh Mirza* AIR 1981 SC 1829.

<sup>28</sup> *M. Nagraj v. Union of India* AIR 2007 SC 71.

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<sup>29</sup> *Kesavananda Bharati v. State of Kerala* (1973) 4 SCC 225

<sup>30</sup> INDIA CONST. art. 17.

<sup>31</sup> INDIA CONST. art. 18.

<sup>32</sup> *Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299.



cannot be destroyed even by an amendment of the Constitution under Article 368”.

The Constitution is supreme and all three organs of the government viz., Legislature, Executive and Judiciary are subordinate to and have to act in accordance with it. Parliament and the State Legislatures have the power to make laws within their respective jurisdictions. This power is, however, not unqualified in nature. The legislative power of Parliament and the State Legislatures has been subjected to certain limitations. The power derived from Articles 245<sup>33</sup> and 246<sup>34</sup> to make laws has to be exercised keeping in view the limitations outlined under Article 13<sup>35</sup> of the Constitution and any violation thereon will make the laws *ultra vires*.

In addition to these clear fundamental rights provisions, numerous other provisions complement the idea of *equality* in broad terms. Article 38 includes the following provision: “The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations”. The succeeding Article 39 lays down certain principles of policy to be followed by the State in this behalf namely, securing equal right of men and women to an adequate means of livelihood including equal pay for equal work for both men and women, distribution of ownership and control of the material resources of the community to the

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<sup>33</sup> INDIA CONST. art. 245.

<sup>34</sup> INDIA CONST. art. 246.

<sup>35</sup> INDIA CONST. art. 13.

common good, and so on. Article 39A<sup>36</sup> focuses on securing operation of the legal system which promotes justice on a basis of equal opportunity.

Article 42<sup>37</sup> incorporates provision on maternity relief that seems to be in line with ILO’s mandate as being mentioned hereinabove. Article 43<sup>38</sup> emphasises on securing to all workers, a living wage. Article 45<sup>39</sup>, on the other, emphasises on securing early childhood care and education for all children until they complete the age of six years.

Article 46<sup>40</sup> also falls under this rubric in demanding protection of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

It should be noted, however, that Articles 38, 39, 39A, 42, 43, 45 and 46 mentioned above appear in Part IV of the Constitution. Articles in this part are not enforceable by the courts, but the principles laid down therein are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

The Hon’ble Supreme Court has reiterated<sup>41</sup> the same principle that the Fundamental Rights and Directive Principles are supplementary and complementary to each other and the provisions in Part III should be interpreted having regard to the Preamble and Directive Principles of State Policy.

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<sup>36</sup> INDIA CONST. art. 39a.

<sup>37</sup> INDIA CONST. art. 42.

<sup>38</sup> INDIA CONST. art. 43.

<sup>39</sup> INDIA CONST. art. 45.

<sup>40</sup> INDIA CONST. art. 46.

<sup>41</sup> Unni Krishnan v. State of A.P., (1993) 1 SCC 645.

Yet again, it is the fundamental duty<sup>42</sup> of every citizen to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic, and regional or sectional diversities; to renounce practices derogatory to the dignity of women.

Thus, Constitution of India in essence seeks, to promote, and to secure to every citizen, *equality* as to status and opportunity. In general, the Constitution of India itself prescribes the legal system of the country to guarantee and promote fundamental rights of the citizens, and respect for the ideals upon which it is founded.

### **Conclusion And Suggestions**

The Constitution of India clearly reflects a group-oriented approach to *equality*. The modern democratic Constitution came into effect on January 26, 1950. Its preamble pledges to secure *Justice, Liberty, and Equality* and to promote *Fraternity*. *Justice* is specifically described to be of three types, not only political but economic and social as well. *Equality* is of not only equal opportunity but also of status. *Justice* and *Equality*, as thus defined, between them, cut the very roots of caste.

However, the system of reservations remains one of the most fervently debated aspects of the general compensatory discrimination program. Many opponents of reservation policies also believe the policies are colonial in character. The first such policies were actually developed under the colonial rule. Promoting gender *equality* and improvement in the status of women are

specifically stated to be central goals of development and social policy in India. Since independence, the commitment is reinforced by constitutional mandate. India also ratifies various international Conventions and human rights instruments committing it to secure equal rights of men and women. Despite the presence of these instruments and legislative measures adopted both at the central and state levels, women in India are far behind the men in most indicators of human development.

Today Rule of Law in India is on the verge of losing its grounds as a compelling norm of social order because it is not the “*government of law*” can rule the country rather it is the “*government of wise man*” rule the country. Rule of Law, in fact, failed to achieve *equality* in pluralistic society like India, and there exist a number of factors which in general responsible for this state of affairs.

Equality before law is correlative to the concept of Rule of Law for all round evaluation of a healthy social order. Rule of Law is diluted when politics is not treated as an instrument for public welfare but as an instrument for private gain. Indeed, during the past few decades the increasing competitiveness in Indian politics has flattened upon the Rule of Law time and again.

Further, there are instances of arbitrary actions, biasness and maladministration on the part of municipal administrative organs which impact very negatively on the principle of *equality*. There exist an irresistible number of complaints directly

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<sup>42</sup> INDIA CONST. art. 51A, cl. e.

related to the work of public administrative bodies.

The Constitution has provided a system of checks and balances. In this endeavour, the perseverant role of the judiciary is notable. A few examples of how our judicial system has ensured justice is clearly seen in the creation of new avenues seeking remedies for human rights violations through PIL pleas and promotion of genuine interventions by the judiciary in the areas of protection of backward classes, gender *equality* including transgender issues, prostitution, bonded and child labour, etc.

Those apart, other bodies such as the National Human Rights Commission and State Human Rights Commissions and various NGOs have made contributions in preventing human rights violations and abuses. But these are still not adequate. Consequently, the need of the day is reform and in the process all must play a proactive role.

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