
THE EQUALITY CONUNDRUM VIS-À-VIS RIGHT TO EQUALITY AS ENSHRINED UNDER THE INDIAN CONSTITUTION

Prakhar Prabhat Srivastav, NALSAR University of Law, Hyderabad

CHAPTER-1

INTRODUCTION

"Give the people the torch of education to put the nation on the track of prosperity," was George Bernard Shaw's wise advice. Thus, the focus should be on optimizing the use of the educational infrastructure, augmenting funding, reconsidering the entire teaching and learning process, and modernizing the outdated administrative apparatus, which is more detrimental than beneficial. The Constitution guarantees equality to all citizens and prohibits the state from discriminating in any form. It makes it clear that discrimination on the basis of caste, color, sex, religion, or race is prohibited and ensures that the government will treat every person equally. It also enables everyone to have access to the same opportunities and jobs.¹

The ultimate objective was to reconcile the caste, religious, and economic divides that pervaded the community. At the time of independence, reserve was supposed to realise the ultimate aim of development. However, as it already does, the inclusion of specific possibilities for promotion was never intended to cause more caste-based societal separation and disintegration. Therefore, discrimination against these socially vulnerable groups is prohibited by the Constitution under several sections, including 15(4) and 16(4). The aforementioned law confers upon the state the power to provide particular money towards the progress of scheduled castes and tribes, in addition to persons from disadvantaged socioeconomic or educational backgrounds. In our society, it is illegal for prejudice to be based on caste, culture, or religion.²

Nonetheless, the Indian Constitution's writers decided to insert a clause prohibiting

¹ Aggrawal, R. C. (1988). Constitutional development and national movement of India. New Delhi: S. Chand & Company.

² Arora, Ramesh K & Meena Sogani (2011). Governance in India: Paradigms and practices, Aalekh Publishers, Jaipur.

discrimination, which offers women and those from marginalized communities even greater protection. India has a fairly rigid caste-based hierarchical system in place for more than 3,000 years, with benefits being ranked higher and drawbacks lower. The social, political, economic, and educational divide continued to enclose the vast majority of the nation's citizens. Backwardness is profoundly embedded in the contemporary Scheduled Tribes (STs), Scheduled Castes (SCs), and Other Backward Classes (OBCs). Even though these groups are sometimes referred to as "Backward Classes," there are variations in the types and degrees of backwardness. After breaking away from the British Empire in the late 1940s, the nation attained democracy and equity. The social, political, and economic system then needed to have a code developed. The 1950 Constitution made an effort to accomplish the same objective. In the Hindu caste system, the lower classes were called Scheduled classes. Scheduled Tribes were those who had not converted to Hinduism but had previously practiced animism. According to Article 46 of the Constitution, the State will defend the less fortunate segments of society—the Scheduled Castes and Scheduled Tribes in particular from exploitation and social injustice. Furthermore, it will prioritize furthering their educational and financial goals. The cornerstone of this directive and other related regulations is the Protective Discrimination Policy, which is the outcome of constitutional provisions and their intended followup plans for the social advancement of the weaker sectors.³

The Indian Constitution, Dr. Ambedkar, advocated in favour of enacting legislation that would promote the advancement and decent treatment of the lower classes. The three principal objectives of the Protective Discrimination Policies for the Backward Classes are empowerment through education, political participation, and economic opportunity. In order to accomplish the first goal, the Constitution sets aside seats for Scheduled Castes and Scheduled Tribes in the State Vidhan Sabha (The Lower House) in line with Article 332 and in the Lok Sabha (The Lower House) in line with Article 330. It's also important to remember that OBCs are not covered by these rules, meaning that the only groups our Constitution recognises as eligible for affirmative action are Scheduled Castes and Scheduled Tribes.

With respect to the second goal, the State may establish any extraordinary circumstances necessary to support citizens who are members of socially and educationally marginalised groups, as well as Scheduled Castes and Scheduled Tribes, in order to assist them grow in life, as stated in the Constitution's Articles 15(4) and 15(5). The third objective of the Constitution

³ Atri, Ajeet (2006). Gandhi's view of legal justice. New Delhi: Deep & Deep Publications.

has led to revisions and simplifications of articles 16(4), 16(4A), 16(4B), 335, and 320(4) throughout time. These clauses unequivocally recognise the state's right to reserve jobs in the public sector for members of the underprivileged classes and to amend them as needed in the future. But it seems like reverse discrimination is now more popular than just affirmative action.

This reservation has allowed some elites from the underprivileged classes to gain power in the political and/or economic spheres. But most of the people in the lower classes still live pretty much the same lives. Their rural lifestyle contributes to their scant means of subsistence. The Backward Classes have their own distinct economic class structure as a result. One may claim that individuals who are undeserving have profited while others who are qualified are still striving towards a significant improvement in their circumstances because the economic status test is not implemented. The Indian Constitution's present reservation policy was determined after evaluating the consequences of the Poona Pact of 1932. The Indian Constitution's authors actually rectified the Poona Pact of 1932 in 1950 when they gave reservation rights to all minorities, including the Backward Classes. The reserve quotas in the Indian Constitution, which were meant to provide those who had been denied opportunities in the past a piece of society, have backfired and infuriated the segments of society that had held a stranglehold on power up until this point. The concept of equality affirms that all individuals are equal and entitled to freedom.⁴

For there to be equality, everyone needs to be accorded the same respect and rights. Everyone has a right to be treated fairly. This means that public authorities cannot be biased themselves, nor can they apply or enforce laws, rules, or programmes in an arbitrary or discriminatory manner. Nondiscrimination is a cornerstone of the equality principle. Furthermore, it may be unlawful to discriminate on the basis of some other factors. It ensures that no person's rights will be violated due to factors such as birthplace, assets, social or racial background, language, religion, sex, race, colour, or other viewpoints. These include things like age, nationality, marital status, disability, place of residence, and sexual orientation. In some situations, treating individuals differently may be necessary to achieve equality.

This is due to the possibility that certain people may find it difficult to independently exercise their rights. A treatment may not be deemed unlawful discrimination if it is based on reasonable

⁴ Austin, Granville (1966). *The Indian constitution, cornerstone of a Nation*. Oxford: Clarendon Press.

and objective standards and fulfils a legal purpose as stated by the International Covenant on Civil and Political Rights. The right to equality and nondiscrimination has both good and bad aspects. These include the need to protect and promote everyone's capacity to exercise their rights as well as the imperative to stop discrimination and the deterioration of equality.

The right to equality is the absence of legal discrimination against any person, group, class, or race. As our Constitution makes clear, equality is still a relatively new idea in India. According to our Constitution, every Indian has the fundamental right to practise equality, regardless of caste, creed, economic status, ethnicity, or gender. In ancient Indian society, caste was a major contributor to inequality. Buddhism and Jainism brought about such a significant change in society that many began to question whether the caste system itself could ever be justified. Later, both Islam and Christianity made mention of how equal all men are in God's eyes. The Bhakti movement in mediaeval India embraced these concepts and gave most Indians access to equality. Soon after India gained independence in 1947, states assumed responsibility for ensuring equality. The intention of the Constitution's architects was for subsequent governments to incorporate its principles into the nation's socioeconomic structure.⁵

Every Indian now has an equal opportunity to flourish as a result. In order to grant the so-called disadvantaged classes the same rights as the so-called prosperous ones, the Constitution developed the concept of reserves. This form of positive discrimination is allowed under the Indian Constitution in an effort to advance social equity and status parity. The founding fathers never intended reservations to be a fad. The impoverished were to continue to have reservations until social and economic conditions changed. To give the less fortunate classes a better foundation and the same rights as a sovereign and free nation, reservations were introduced to the system.⁶

CHAPTER- 2

THE HISTORY OF THE RIGHT TO EQUALITY

Since ancient times, the twin concerns of inequality and equality have dominated political discourse. In Greek philosophy, two separate schools of thought arose. Two traditions that encouraged socioeconomic disparity were endorsed by both Aristotle and Plato. Pericles and

⁵ Bakshi, S. R. (1987). *Gandhi and ideology of swadeshi*. New Delhi: Reliance Publishing House.

⁶ Baghel, C. L., Yogendra Kumar (2006). *Good governance*. New Delhi: Kanishka Publishers.

the Stoics were the heads of the opposite school of thought, who advocated for gender equality among males. Justice according to Aristotle is the treatment of equals fairly and unequals unfairly. Three kinds of men exist, according to Plato: those made of iron, silver, and gold. The concept of universal brotherhood and citizenship, which was founded on natural law and reason and linked to the contemporary conception of equality, was first presented by the Stoic philosophers Zeno, Cicero, and Seneca. We know that equality and the lack of discrimination are inevitable in this world. To comprehend this link, however, we must first examine moral, legal, and universal principles. We also need to examine the definitions of progressivism and equality. Both generally and specifically in the legal domain, equality philosophy remains ambiguous. Philosophers' conception of equality in relation to society advancement has been called a "treacherously simple concept," but there are differences in our comprehension of its significance, relevance, and real-world implications.⁷

Furthermore, the concept of equality is ever-present and adaptable in public discourse to take into account societal developments. Political discourse, legal theory, moral philosophy, and general usage in society all embrace several meanings of equality, each serving complimentary or conflicting objectives. These objectives breathe life into the concept of equality and highlight all of its normative and positive manifestations. There have been several attempts to pinpoint the conceptual foundations of equality. Consider, for instance, the legal systems of the United States, Canada, South Africa, Ireland, and the United Kingdom, as well as the international human rights law included in UN Conventions and Declarations. In this chapter, the researcher provides a quick summary of the concepts of discrimination, unfair treatment, and adverse results and makes the case for incorporating progressive social morality within national legal frameworks.

The researcher then lays out the various philosophical interpretations of equality throughout history. In the Middle Ages, Christianity was the first to encourage equality; nevertheless, this quickly evolved to equality before God. God was content that all humans on Earth were equal in spite of their differences. During this time, the law acknowledged societal injustices and granted legal privileges to the nobility and clergy, which were widely acknowledged by the populace. These legal rights based on birth gave rise to contemporary concepts like equality by birth and equality before the law. "Confucius" introduced the idea of social equality within Confucianism. According to the idea of social equality, every person should have an equal

⁷ Barthwal, C. P. (Ed.) (2003). *Good governance in India*. New Delhi: Deep & Deep Publications, 22.

chance to develop as a person, regardless of their age, social standing, caste, colour, sex, race, language, or degree of education. His concept has frequently been accused of encouraging inequality and social difference.⁸

It is clear from his support of distributing rights and advantages according to socioeconomic differences that he does not adhere to the modern Western ideals of equality. Nevertheless, in the framework of Confucian principles, the concept of equality has historical relevance. Contemporary advocates of Confucian philosophy contend that it challenges mainstream perceptions of equality rather than the concept of equality itself. Due to its Marxist origins, the conventional understanding of equality today is prone to criticism that it is unworkable. According to Nuyen, "there must be inequality in the ranking of preferences if there is to be equality in welfare or happiness; if resources or opportunities are distributed equally, some will take better advantage of them.

If outcomes are to be equal, there must be inequality in the distribution of resources."The Greeks The Greek idea of "the democratic society," which is closely related to ideas from the 20th century, placed a great importance on equality. For instance, Thucydides describes the stages that a democratic legal system should traverse in order to present a progressive understanding of equality: Looking to the laws, we see that they afford everyone equal justice in their private disputes; looking to social standing, we see that one's reputation for ability determines one's fate in public life on the basis of merit; and finally, poverty does not preclude one from serving the state by concealing their circumstances. inherent equality Plato defined intrinsic equality as follows: "All men are by nature equal, made of the same earth and by one workman and however we deceive ourselves, as dear unto god as the poor peasant as the mighty prince." In *Leviathan*, Thomas Hobbes summarises his views on equality within natural law theory. "Nature hath made men so equal, in the faculties of body and mind; as that though there be found one man sometimes manifestly stronger in body, or of quicker mind than another; yet when all is reckoned together the difference between man and man is not so considerable, as that one man can thereupon claim to himself any benefit, to which another may not pretend, as he," Hobbes writes. Hobbes and many other proponents of natural law held that everyone was born with the equal rights that come with being human. For instance, Locke acknowledged that since each individual has the right to their own inherent freedom and is

⁸ Baruah, Aparajita (2007). *Preamble of the constitution of India: An Insight and comparison with other constitutions*. New Delhi: Deep and Deep Publications.

independent of the desire or power of another, everyone is equal under natural law. Locke did not suggest that all men were equal in every sense, even though he saw no opposition to his theory of equality in nature: It is not expected of me to understand every manifestation of equality. It's possible that men should be given priority over women due to their age or morality.

Some may have better parts and craftsmanship than average, making them superior. While some may gain from it, others may be forced by birth to honour those who deserve it due to nature, thankfulness, or other factors. A Marxist Perspective on Parity In his book *Critique of the Gotha Programme*, Karl Marx explains his position on "the equal right". In this essay, he challenges the "equal right" proposed by proponents of natural law theory and advances his thesis, "To each according to his needs, from each according to his abilities." In this chapter, Marx challenges the equal right's foundational ideas as well as its capacity to advance "fair distribution." Marx examines the impact on labour and concludes that the equal right remains a capitalist right as long as it is subject to capitalist restrictions. Formal Equivalency and the Traditional Legal Process: "Equal right is unequal right for unequal labour" since every individual is unique, regardless of their physical or mental capabilities. In many different national legal systems, equality is viewed as formal equality in the common and traditional viewpoint.⁹

The idea of equality serves as a set of formal requirements in the formal method. Aristotle's adage that "things that are alike should be treated alike" and formal equality are closely associated. These days, the most prevalent conception of equality is this one. Formal equality is based on the idea that treating people fairly is a moral obligation that necessitates consistency or equality. It advocates for individual justice as the cornerstone of a moral case for morality.⁵ In many nations with strict equality regulations, formal equality plays a significant role in both legislation and policy. It offers, for example, the theoretical foundation for the US Constitution's provision of "equal protection of the laws" and the UK's use of the term "direct discrimination." According to the formal method, a person's personal or physical attributes shouldn't be taken into consideration when deciding whether or not they are entitled to a specific social advantage or gain. The merit principle forms the basis of the protagonists' defence of this tactic for the most part. According to the liberal viewpoint, formal equality is

⁹ Bhargave, Rajeev, Michael Duscae and Helmut Reifeld (eds.) (2008). *Justice: political, social and juridical*. New Delhi: Sage Publications.

required in a democratic society in order to uphold the merit principle. F. India's Right to Equality Everyone has a tendency towards inequality. Differences in intrinsic characteristics, such as size, weight, and skill, are the root cause. Moreover, there are disparities based on sex, colour, ancestry, or property ownership that are manufactured and have nothing to do with abilities and functions. These variations in societal injustice are reflected in individual variances. There is one significant distinction between ancient and modern civilizations, despite the fact that both exhibit considerable inequality. Up to the 20th century, the rules of the majority of civilizations acknowledged and encouraged socioeconomic disparity. There was a lack of acceptance of one's equality as a person or as a member of the community. Inequality is therefore socially and legally acceptable.¹⁰

Despite the likelihood of social or power-based disparities, legal inequality does not exist in many democratic and socialistic countries of the 20th century.⁸ Indian civilization of old was rife with inequality. Discrimination based on caste and gender was enforced by laws from both Islam and Hinduism. In addition to the injustice brought about by the slavery system, other forms of injustice that influenced Indian civilization were sati and female infanticide. Equality is a widely recognised idea in contemporary democracies that has permeated numerous businesses. Legal Equality: Equal protection under the law and equality before the law are synonymous with legal equality. Equality before the law should be treated equally by the law. It is untrue that receiving equal treatment under the law entails having equal rights. Laws pertaining to discrimination must make it understandable. Equal law for equals and unequal law for unequals is the definition of legal equality, albeit discrimination must have a justification.

Political Equality: The idea that men are logical beings with the ability to make political decisions regardless of their abilities—mental, physical, or educational—is the cornerstone of the movement for political equality. By using one's right to vote, everyone has equal access to political power. This is known as political equality. There are two methods that citizens can take part in the democratic process. The person may take part in the process as a representative of the people or as a voter. India's past demonstrates the variety of circumstances that might influence both types of engagement, including poverty. According to the theory of social equality, every person should have an equal chance to develop their personality, regardless of their social standing, caste, colour, sex, race, language, education level, or age. It is possible

¹⁰ Bhatt, Amitabh (2013). *Gandhi and his political philosophy*. New Delhi: Centrum Press.

for society to assign people to suitable occupational categories without creating a sense of superiority or inferiority. One should not judge a man's social standing or notoriety based on where he was born into an aristocratic family. It is insufficient to solve the issue by depending just on legal and constitutional safeguards. It is also essential to reject the idea of racial superiority. Financial Parity: Equitable wealth distribution is not a prerequisite for economic equality.¹¹

The necessities of existence should be available to everyone equally, and further economic disparities are acceptable. When everyone has equal possibilities to advance economically, economic equality can be achieved. Economic equality is the result of having enough work opportunities, fair salary, enough free time, and other economic rights. intrinsic equality This implies that all men are equal by nature. The Stoics of ancient Greece and later Roman philosophers like Polybius and Cicero disagreed with the notion that people is fundamentally unequal. Aristotle and Plato were the first to put out this idea. It is claimed that Rousseau and Marks are the two most influential modern proponents of humanity's inherent equality.

CHAPTER-3

EMBRACING EQUITY: EXPLORING THE NATURAL LAW PERSPECTIVE ON EQUALITY

In legal and moral philosophy, "natural law and natural rights" are two closely connected ideas that have sparked a great deal of discussion and investigation. In essence, natural law and natural rights affirm the existence of a higher, objective law that is derived from reason and observation and is based on the nature of the universe and of individuals rather than being something that humans have created or enforced. In the words of John Finnis, "natural law and natural rights are not two different things, but aspects of the same reality." "The natural law is an objective reality rather than the product of human design," asserts Lon Fuller. A few examples of natural rights that are acknowledged and safeguarded by governments but are neither established nor bestowed by them include the rights to life, liberty, and property.

The idea that every individual has fundamental, unalienable rights is one of the most important consequences of natural law and natural rights. There has been much discussion about the

¹¹ Bombwall, K. R. (1980). *Indian Constitution and modern Indian political thinkers*. Ambala Cantt.: Modern Publications.

complex relationship between natural law and natural rights. The US Declaration of Independence states that "all men...are endowed by their Creator with certain unalienable rights," reflecting the assertion made by Robert George and Jean Bethke Elshtain that "there are certain rights that belong to human beings simply by virtue of their humanity, and these rights cannot be taken away by Governments or other human authorities." While some see natural rights as a subset of natural law, others contend that natural law is the basis for natural rights. Regardless of the specifics of their relationship, it is evident that the two ideas are supportive of and closely tied to one another.¹²

The Universal Declaration of Human Rights was adopted by the UN in 1948 under the guise that all persons are endowed with inherent rights. "Natural rights and natural law are mutually supportive, mutually implied, and mutually clarifying," claims John Finnis. Conversely, important court decisions like *Brown v. Board of Education of Topeka*, which ended racial segregation in US public schools, were based on the idea that discriminatory laws and policies violate people's fundamental rights. In truth, natural law and natural rights have had a significant impact on legal systems all over the world. This research paper will use the writings of eminent philosophers and jurists, such as Finnis, Fuller, George, and Elshtain, to investigate natural law and natural rights in deeper detail. First, the definition of natural law is discussed, along with its historical development from the Greeks to the present. In light of the fact that George and Elshtain state that "the idea of natural rights has been a driving force behind many of the most significant social and political movements of the modern era," this study examines legal philosophy and case law in order to show how important and relevant natural law and natural rights are to modern legal theory and practice.

There is also discussion of many viewpoints and arguments regarding the connection between natural law and natural rights. With an emphasis on their function in international law, human rights law, and constitutional law, this essay will also discuss the consequences of natural law and natural rights for modern legal regimes. The stoic philosophers, for example, promoted the idea that reason may lead to a higher law that is innate in the natural world. Roman jurist Cicero used a similar argument, saying that true law is the reasonable reason that is in accordance with nature.¹⁰ Christian theologians in the Middle Ages, like Thomas Aquinas, espoused natural law, arguing that it is based on God's essence and represents the divine plan for humanity.¹¹ Subsequently, intellectuals such as John Locke and Thomas Hobbes criticised this approach,

¹² Chakarabarty, Bidyut (2017). *Localizing governance in India*. New York: Routledge.

underlining the centrality of personal autonomy and self-interest in defining human conduct and legal structures. Natural law is a "philosophical and legal tradition that stretches back to classical Greece and Rome," according to Brian Tierney.¹³

Nevertheless, the idea of natural law remained, notably in discussions of morality and religion. On the other hand, the concept of natural rights built on the intellectual underpinnings of liberal democracy and enlightenment concepts. This theory was conceived by philosophers Immanuel Kant and Jean-Jacques Rousseau, who maintained that there existed a social contract wherein individuals voluntarily sacrifice some of their natural rights in return for security and protection from the state. According to John Locke, individuals possess innate rights that are neither conferred or established by governing entities. International legal systems have been greatly impacted by the acknowledgment of natural rights. For example, the United States Bill of Rights preserves the core inalienable rights of assembly, freedom of expression, and religion. However, many inalienable natural rights are recognised by the European Convention on Human Rights, such as the right to privacy, the freedom of conscience and religion, and the right to a fair trial¹³. Natural law and natural rights are essential concepts in moral and legal philosophy, however they are also passionately disputed topics. Some contend that natural law and natural rights are overly abstract or based on antiquated views of human nature and morality, while others maintain that they are crucial to sustaining justice and protecting human dignity. To further investigate these disputes, this research project proposes to read the works of renowned jurists and philosophers in the field. The significance of natural law and natural rights in comprehending moral and legal philosophy will be demonstrated in the conclusion of this article. By researching the historical evolution, contemporary significance, and ongoing disputes surrounding the conceptions of law, human rights, and justice in the modern era, this research study strives to better understanding of these areas. Understanding Natural Law and How It Originated: Philosophers and jurists have both been drawn to the concept of natural law, which has played a crucial part in the formation of western legal systems. Natural law is founded on the notions that human action is guided by a higher norm, or set of moral precepts, and that the cosmos is moral by nature. This essay will provide a comprehensive assessment of the evolution of natural law from its historical roots to its significance currently.¹⁴

It does this by drawing on the works of famous jurists and thinkers. The concept of natural

¹³ Chatterjee, D. K. (1984). *Gandhi and constitution making in India*. New Delhi: Associated Publishing House.

¹⁴ Dash, Satya Prakash (2004). *Constitutional and political dynamics of India*. New Delhi: Sarup & Sarup.

law arose in ancient Greek philosophy, primarily in the works of Aristotle and Plato. According to Aristotle, humans are innately driven to act in accordance with laws as they control the natural world and are inherent in the character of objects. Plato believed that eudaimonia, or happiness, was the ultimate purpose of human life and could only be reached by obeying natural law.

Plato also argued that thought and reason may lead to the realisation of the moral and intellectual ideals of a higher realm that transcended the material world. He felt that the underlying order that ruled the universe was reflected in natural law.¹⁵ Natural law and Christian theology came together during the Middle Ages, particularly through the teachings of St. Thomas Aquinas. According to Aquinas, the natural law—which is a mirror reflection of God's everlasting law—may be discovered via reason and revelation. According to Aquinas, there existed a basis for understanding morality and human action in the natural law. He claimed that regardless of one's faith or cultural background, everyone was controlled by natural law.¹⁶ The modern understanding of natural law was formed during the Enlightenment, especially thanks to the works of John Locke and Immanuel Kant. The rights to life, liberty, and property are considered natural rights, according to Locke. He insisted that these rights served as the foundation for natural law. However, Kant believed that the root of natural law was the universal reason principle, which he considered as being part of human nature. He felt that these rights were fundamental to human nature and that a healthy and just society could only be established upon them. He maintained that as reason is the root of all moral and ethical notions, it is the sole mechanism by which moral and ethical standards may be decided.¹⁸ Natural law has shaped the formation of common law and other legal systems in the West. A corpus of legislation known as common law is predicated on the premise that fundamental legal principles should guide behaviour. It is founded on both custom and judicial precedent. It is widely understood that natural law is the source of these principles.

For instance, in the seminal decision of *Brown v. Board of Education of Topeka*, the US Supreme Court utilised natural law arguments to determine that school segregation was unconstitutional. The Court found that segregation violates the principle of equal protection under the law, which is regarded to be a fundamental human right. The verdict had a tremendous impact on US civil rights legislation and helped establish equality before the law as a fundamental and inalienable value. Scholars have been debating the idea of natural law for decades. Scholars such as Aristotle and Cicero first proposed the idea of natural law in

ancient Greece and Rome. They argued that a universal moral code might be revealed through reason and an examination of the natural world.¹⁵

Thomas Aquinas developed this idea in the Middle Ages. He thought that there were natural laws that the world followed, laws that reason could understand. Rather than having been created by humans, he believed that these concepts were a part of the natural order of the world. The fact that natural law theory is based on objective principles that exist apart from human civilization is one of its main features. Natural law, according to legal scholar Robert P. George, is the moral rule predicated on the idea that humans are free, rational beings.²⁰ This suggests that natural law is not subject to the whims of specific cultures or civilizations. It is a global law, however, applicable to all racial, cultural, and religious groups. However, the natural law theory can also be understood in numerous ways. Thomas Aquinas argues that natural law is based in God's will, in contrast to John Locke who believes it is ingrained in reason and the fundamental order of the cosmos. The majority of natural law theory proponents concur that reason and observation of the natural world can disclose certain objective moral truths, notwithstanding these differences in opinion. Human rights is one of the most prominent areas in which natural law theory is applied in the legal system.¹⁶

Many essential human rights are unalienably protected by the universe's underlying order, according to proponents of natural law theory. Among the essential liberties that endure even in non-human society are the rights to life, liberty, and the pursuit of happiness. In the historic decision of *Roe v. Wade*¹⁷, the US Supreme Court upheld a woman's right to privacy about an abortion by applying the natural law presumption. Harry Blackmun, Jr. asserted that "a woman's decision whether or not to terminate her pregnancy is covered by the right to privacy, which is sufficiently broad," partly because he thought that women had an innate right to control their own bodies. The idea of natural law has a lengthy history and has changed over time. Despite this intricacy, most jurists agree that reason combined with an analysis of the natural world can yield certain objective moral principles. The continuous debate over this idea among philosophers and legal experts has affected the development of human rights. Acknowledging the innate rights According to the theory of natural rights, each and every person possesses inherent rights that are untouched by societal or legal structures. Natural rights expert John Locke maintained that everyone had an intrinsic right to "life, liberty, and

¹⁵ Datta, Amlan (1962). *Socialism, democracy and industrialization*. London: Allen & Unwin.

¹⁶ Dhaliwal, S. S. (2004). *Good governance in local self-government*. New Delhi: Deep & Deep Publications

¹⁷ 1973 SCC OnLine US SC 20

property," and that it is the responsibility of the state to uphold these rights. The American Founders' inclusion of the concept of inherent rights in the Declaration of Independence served to bolster this argument even further. All men are created equal and have some inalienable rights, such as the right to life, liberty, and the pursuit of happiness, according to the Declaration of Independence.²³ Though it shaped history, the idea of natural rights has been challenged. The claim that natural rights are too theoretical and abstract to be useful in day-to-day living is a popular one. Despite these flaws, natural rights theory is nonetheless important in today's legal and political discourse. A critique of natural rights theory that legal expert Ronald Dworkin points out in his article "Natural rights theories are notoriously difficult to apply to concrete legal problems" is that it is culturally specific. For example, philosopher Martha Nussbaum contends that because the idea of natural rights developed in a certain western culture, it might not be applicable in other cultural situations. Many social justice and human rights projects have been greatly influenced by the notion that some human rights are unalienable and that the state must uphold them. In conclusion, the theory of natural rights holds that every individual is born with a set of rights that are independent of social or legal frameworks. A few of the numerous protections contained in the 1948 UN-ratified Universal Declaration of Human Rights are the rights to life, liberty, and personal security. Despite resistance, especially from human rights and social justice organisations, this idea is nonetheless central to the legal and political discourse today. Knowledge of inalienable rights in India In India, the concept of natural rights has a long history. Natural law and rights are important, and the Hindu philosophy's central idea of Dharma acknowledges this. The Indian Constitution, ratified on January 26, 1950, created the concept of natural rights in the contemporary sense. The Preamble of the Constitution and its sections on fundamental rights acknowledge natural rights as the cornerstone of an impartial and just society. Natural law is the foundation of the Dicey-approved legal system enshrined in the Indian Constitution; "natural rights" are those that are inherently part of natural law.

A number of rights are given a lot of weight because the Indian Constitution recognises them as Fundamental Rights. Since both Articles 14²⁷ and 21²⁸ of the Indian Constitution uphold the concept of inherent rights as articulated within the framework of natural law, they essentially sum up Article 3 of the Universal Declaration of Human Rights. This is evident upon closer inspection. The Indian court has been instrumental in maintaining and interpreting

natural rights over the years. *Kesavananda Bharati Sripadagalvaru v. State of Kerala*¹⁸ is one of the most important rulings in this respect; in this case, the Supreme Court held that the fundamental principles of the Constitution could not be changed, not even by a constitutional amendment. The natural rights and other fundamental rights guaranteed by the Constitution were upheld by this ruling. The Supreme Court's ruling in *Maneka Gandhi v. Union of India*¹⁹ which established that the freedom to go abroad was a component of the right to personal liberty granted by Article

21, was another significant case in this regard. The aforementioned ruling expanded the concept of inherent rights while upholding the significance of individual freedom as a prerequisite for an unbiased and just society. In *D.K.*, the idea of natural rights was maintained. Firing an employee for taking longer than permitted by law is permissible, according to the Supreme Court's decision in *D.k Yadav v. J.M.A. Industries Ltd*²⁰; nevertheless, doing so would be a flagrant breach of the employee's Article 21 rights and cannot be carried out without first providing the person with a hearing. A study reveals the tight relationship between natural law and natural rights, despite their being two separate legal notions. According to the theory of natural law, morality is innate in human nature and is decided by reason.

All legal systems and regulations are based on these universally accepted and inflexible concepts. Natural rights, on the other hand, are defined as individual freedoms that are thought to be unalienable and based on natural law. Natural law, according to jurist John Finnis, provides the conceptual foundation required for the acknowledgement and defence of natural rights. Put another way, the foundation of these traditions is natural law. One well-known example of how natural law and natural rights interact is the case of *Brown v. Board of Education of Topeka*²¹. The US Supreme Court held in this historic judgement that the Equal Protection Clause of the Fourteenth Amendment is violated by the "separate but equal" approach to public education. The Court came to the conclusion that segregation "has a detrimental effect upon the children of colour" after relying mostly on natural law grounds. Because legalised racial segregation is frequently interpreted as a sign of the African American community's inferiority, it has a bigger effect. We disregard any language that goes against this. We find that the "separate but equal" paradigm is inappropriate for the public education

¹⁸ (1973) 4 SCC 225

¹⁹ (1978) 1 SCC 248

²⁰ (1993) 3 SCC 259

²¹ 347 US 483 (1954)

system. Differentiated education is inherently unfair.

The Indian Constitution maintains and defends some fundamental rights that are deemed necessary and unalienable. Legal expert Upendra Baxi claims that the Indian Constitution safeguards a number of fundamental rights that are grounded in natural law ideas and act as the cornerstone for upholding the freedoms and liberties of individuals. The rights to equality before the law, liberty, and life are among them.³⁵ These are regarded as inalienable and innate rights.

The foundation for recognising and defending natural rights is natural law. "Natural law" refers, as was previously mentioned, to the moral and ethical precepts that are part of the universe and human nature. Life, liberty, and property rights are among the recognised natural rights that belong to every individual. Natural law, according to legal philosopher John Finnis, is "the principle that human beings are entitled to certain basic goods, such as life, health, knowledge, and friendship, which are necessary for a fulfilling life."³⁶ These needs are acknowledged as natural rights since they are essential to the human experience and development. These unalienable rights are safeguarded by natural law, which serves as a basis for moral and ethical judgements as well as the formulation and application of legislation that upholds these rights. Furthermore, natural law prevents the government from overreaching and violating the unalienable rights of its inhabitants. Natural law and natural rights are closely related ideas because natural law is the foundation for the recognition and defence of natural rights. According to legal expert Brian Tierney, "the goal of natural law is to ensure that no human authority may violate the inherent rights of individuals."

This implies that the State has an obligation to protect citizens' natural rights and that any laws or actions that do so are unlawful. By giving people the moral and ethical guidelines needed to recognise and defend their rights, one could contend that natural law restricts the power of the State and keeps it from violating either the rights of the people or the rights of the State itself. Whether natural rights can exist without reference to natural law is another point that is raised. We can reasonably conclude from the previous arguments that natural law forms the basis for the assertion of natural rights, despite the fact that this is a challenging subject to answer.²²

How would we define natural rights if the idea that natural law, a higher body of law, regulates

²² Lon Luvois Fuller, *The Morality of Law* (Yale University Press, New Haven, 1964).

human behaviour were torn apart theoretically? The foundation of natural law is this. According to Finnis, natural law is the only logical foundation for protecting rights like life and liberty.³⁸ Given that natural law and natural rights are still contentious issues, the paper's conclusion has to recognise their importance. Almost all laws, whether directly or indirectly made, are based on natural law. The Indian Constitution is one such text that draws inspiration from natural law. Dicey's conception of the rule of law is based on natural law. Understanding natural law systems is essential before discrediting them, as they are the foundation of the majority of democracies and legal systems worldwide. The body of rules that governs both humans and animals is known as natural law. Examples of natural laws include predetermined lifestyles, natural dos and don'ts, and the laws of nature. Is it flawless? Perhaps not, but it ought to be recognised as the foundational principle of any legal system. Natural law is a set of rules that are based on reason and are intended to be adhered to by all members of the public. If certain requirements are satisfied, reason can create these regulations. One could consider natural law to be the ancestor of natural rights. Natural law is the keystone of these rights. The natural laws would not exist without their theoretical foundation. Because all men are created equal and should be treated similarly, natural law protects all intrinsic rights, including the right to equality. Natural laws and natural rights are hence closely related, with the former producing the latter. A modern examination of the relationship between natural law and natural rights²³

LEGAL POSITIVISM AND EQUALITY

Moral factors should not be taken into account while drafting laws, according to the legal positivist school of thought. As opposed to its physical birthplace, the historical context is believed to have a greater impact on the morality of a statute. The moral or ethical implications of a law do not affect its legitimacy; what gives it legitimacy is its application by a recognised authority, such a legislature. This goes against the grain of what is believed to be the natural law idea, which maintains that moral standards need to underpin legislation. The "separation thesis," a central tenet of legal positivism, maintains that the fields of ethics and law are distinct from one another.

Looking at the law through a moral lens is out of the question from this vantage point. According to legal positivists, the most important thing is to be able to identify and comprehend

²³ John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 1979).

the legal sources, which include things like statutes, precedents, and court decisions. When it comes to the topic of equality, legal positivism adopts a measured and comprehensive approach. Contrarily, proponents of legal positivism contend that preexisting institutional and legal frameworks should be used to apply the equality principle. The universal concept of equal protection under the law ensures this, so it stands to reason that everyone must obey the same rules. So, according to legal positivism, everyone, regardless of their gender, race, or socioeconomic status, should have the same right to be protected by the law. Even so, substantive equality—the production of equal outcomes or the redistribution of resources to achieve social equality—is not necessarily supported by legal positivism. In contrast, legal positivists maintain that the law ought to be impartial and should not give special treatment to any group or individual based on their individual circumstances. This shows that variables outside of the legal system, such as social, economic, and political ones, may be too great for legal positivism to overcome when it comes to systematic inequalities. One possible outcome of legal positivism's emphasis on the state's and its institutions' authority is the conservative position on legal reform. Some legal positivists may be reluctant to criticise or challenge laws that uphold injustice or inequality due to their great regard for the existing legal system and its origins.

Having such laws approved by a formal entity makes this point even more compelling. Critics of legal positivism say that the movement risks creating an excessively inflexible legal system that doesn't deal with fundamental problems like inequality and injustice because it ignores moral issues in favour of a strict concentration on legal principles. A more equitable society cannot be fostered by legal positivism, they argue, since it fails to take moral and ethical principles into account. Lastly, legal positivism provides a fresh viewpoint on how equality functions inside the framework of the law. Despite the significance of treating everyone equitably in the legal system, there may be more fundamental concerns with social, economic, and political inequities that require attention. That is why researchers and professionals concerned in comprehending and advocating for more equitable legal systems continue to discuss and study legal positivism.²⁴

²⁴ Goswami, B., R.G. Chaturvedi (2007). *Law and social justice*. Jaipur: Raj Publishing House.

CHAPTER- 4

CONSTITUTIONAL FRAMEWORK

One of the most essential rights protected by the Indian constitution is the right to equality. The whole list of the Indian Right to Equality is found in Articles 14–18. Consequently, Article 14 came to be seen as a negative right of individuals to be free from discrimination, irrespective of their appointment to or holding of public office. Current disparities, particularly those resulting from public policy and the exercise of governmental power, were not taken into account. The creators of the Indian Constitution would not have approved of any such attempt to ensure equality. Though they were aware that official policies and the use of force continued to legitimise significant economic and social imbalances, Buddha and many others had fought for equality in this area.

A single clause like Article 14 could barely rectify, mitigate, or eradicate such inequities. It was possible to give them the best treatment possible, but it would have taken a very long time. As a result, they expressly forbade or outlawed a number of historical injustices, whether they were committed by the state or by private individuals, and they authorised the state to take the required steps to lessen or completely erase these injustices. The founders' intention is made clear in Articles 15–18. As a result, in India, the guarantee of equitable treatment and the absence of discrimination are both included in the right to equality.²⁵

Article 14, which declares that "the state shall not deny to any person equality before the law or the equal protection of the laws," applies to all individuals who are inside the borders of India. "Equal protection under the law" is not the same as "equality before the law." The first is gloomy and implies that no individual or group receives special consideration. The Equal Protection Clause is a wonderful document in spirit and purpose. It implies that everyone should receive equitable treatment under all circumstances. The concept of "equality before the law" states that all individuals are subject to the same laws and punishments for the same acts, regardless of their socioeconomic background. The phrase "equal protection of the laws" originally appeared in the US Constitution in the Fourteenth Amendment. It basically states that everyone ought to treat everyone fairly and impartially. It is within the power of Parliament to classify individuals for these purposes. It must be placed in a logical category. An analysis of the logical classification Class legislation is prohibited by Article 14, but this does not mean

²⁵ *IndraSawhney v Union of India*, 1992 Supp (3) SCC 217; AIR 1993 SC 477

that legislators cannot rationally arrange people, objects, and transactions to accomplish certain objectives. No classification that is "arbitrary, artificial, or evasive" is possible. Legislative classifications are invalid if they lack logic. A classification needs to fulfil these two requirements in order to be deemed reasonable: 1. For a classification to be justified, there needs to be a clear difference between the items or individuals that fall into one category and those that don't. Secondly, the rationale behind the differentia must align with the objective of the applicable statute.³ How much does Article 14 of the Constitution prevent Scheduled Castes from being micro-or subclassified for reservation purposes? That was the main query that the court was asked to consider in *E.V. Chinnaiah v. State of A.P.*²⁶

The Supreme Court ruled that this kind of subclassification is illegal. "The state shall not discriminate against any citizen on grounds solely of religion, race, caste, sex, place of birth, or any of them," states Article 15 of the Constitution. The court correctly noted in the *Indira Sahaniit* case that Scheduled Castes and Scheduled Tribes are free from the separation of backward classes. As mentioned in the article, no one is permitted to: a. use roads, wells, tanks, bathing ghats, or parts of public resorts that are entirely or partially funded by state funds; or b. enter retail establishments, eateries, lodging facilities, or public entertainment venues. However, this article makes no mention of the fact that the state can still make exceptions for women and children. Scheduled castes and tribes are entitled to special treatment from the government, just as poorer groups in terms of money and education are. In the case of *Nain Sukh Das v. State of UP*,²⁷ the Supreme Court invalidated state assembly legislation that created distinct electorates for different religious groups.

In *D.P. Joshi v. State of M.P.*,²⁸ the Supreme Court decided that a residency-based discriminatory article 15 statute is not unconstitutional. Article 5(1) distinguishes between the place of birth and the place of residency. The five-judge Supreme Court bench rendered a significant decision⁷, saying that even though a person's name is the same in two distinct jurisdictions, they are only entitled to the privileges, rights, and benefits of the state from which they originally arrived. The individual's benefits and rights end in such a situation. Clause 5 was added by the Constitution (93rd Amendment) Act of 2006. The three Supreme Court decisions that have already been put into effect—in *T.M. Pai Foundation v. State of Karnataka*

²⁶ (2005) 1 SCC 394

²⁷ AIR 1953 SC 384

²⁸ AIR 1955 SC 334

²⁹and *Islamic Academy v. State of Karnataka*³⁰—are intended to be overturned.⁹ In accordance with its rules, reservations may be issued for SC/ST and backward classes. Section 16: Equal job opportunities in the public sector are guaranteed by Article 16. Everybody has the right to equal opportunity in terms of employment and appointment to any job held by the government, the article claims. i. This article also forbids discrimination in public employment, although it only covers caste, religion, sex, descent, or any combination of these.

There are five exceptions to Article 16's prohibition against discrimination. (I) The Parliament may establish residency requirements for particular governmental positions. ii) The state may reserve particular positions for historically underrepresented groups if they are underrepresented in positions held by the state. iii) Only adherents of the relevant religion may occupy specific roles within the religious organisations. iv) People who belong to tribes and scheduled castes may be given precedence while applying for jobs in government services. v. Lastly, when it comes to public employment, discrimination is only permitted based on the grounds specified in Article 16. But it doesn't deal with favouritism based on decency or effectiveness. Regarding Article 16, "employment" and "appointment" inside the State are the only situations in which individuals are protected from discrimination. Equal opportunity in the workplace can only be ensured for candidates or employees occupying comparable roles. In accordance with Article 16(1), "equality of opportunity in matters of employment means equality between members of the same class of employees and not equality between members of separate independent classes." The State may still require particular credentials and tests for the hiring of public employees even though all citizens are eligible for appointments.

Article 17 of the Constitution declares the caste system extinct and forbids its practice in any form. Additional evidence in favour of the position comes from the 1955 Untouchability Act Abolition. It is unlawful to practise "untouchability" in any form, notwithstanding the fact that neither the 1955 Act nor the constitution define the term. It is illegal to refuse to enrol someone because you believe they are "untouchable". This covers public structures like schools and hospitals. This page does not endorse any specific title, with the exception of examples of scholarly or military distinction. It is strictly forbidden to accept a knighthood or other title bestowed by a foreign country. The Indian government's Bharat Ratna, Padmashri, and other awards are public recognitions of extraordinary achievement rather than titles. The Indian

²⁹ AIR 2003 SC 355

³⁰ AIR 2003 SC 3724

Constitution offers specific safeguards for the right to equality in order to prevent rights from being violated.

CRITICALLY ANALYSIS

The social, legal, and historical factors that surround the equality debate in relation to the Right to Equality Article of the Indian Constitution make for a complex background. Paradoxically, social and economic inequality persists even though equality is guaranteed by the constitution. Making progress towards universal equality a reality is challenging, which is a major contributing factor to the problem. Many Indians often disobey the principles for equality before the law and the prohibitions of discrimination based on gender, ethnicity, religion, and place of birth found in Articles 14–18 of the Indian Constitution. The constitutional protections against gender discrimination, economic disparity, and caste-based prejudice have not eliminated these problems.³¹

Differences between constitutional promises and actual practice highlight the complexity of the equality issue. There is a lot of pushback over the courts' interpretation and application of the Right to Equality. The courts' procedures aren't always clear and arbitrary, but they've been crucial in maintaining equity with major rulings like *Kesavananda Bharati* and the Mandal Commission. It has been extremely difficult to find a compromise between affirmative action initiatives, including reserves for disadvantaged groups, and merit-based employment. Notwithstanding the important need of acknowledging past wrongs and fostering diversity, affirmative action opponents contend that these policies could unintentionally reinforce castebased identities and impede the achievement of the meritocratic ambition. In addition, the problem of inequality is made worse by the intersectionality of identities.

Discrimination against a person because of their gender, race, religion, or socioeconomic status is only one example of how multiple identity axes contribute to marginalisation. The Indian government has tackled these interconnected gaps piecemeal, often focusing on specific issues rather than developing a comprehensive plan. As a result of the present state of globalisation and the changing social landscape, attaining equality has grown increasingly challenging. Economic liberalisation has widened the gap between the rich and everyone else, and it has exacerbated inequality in terms of both wealth and opportunity. The boundaries of equality and

³¹ *State of Madras v Champakam Dorairajan* 11951 AIR 226, 1951 SCR 525

the conflict between individual and collective rights have been raised in discussions over cultural diversity and minority rights. Lastly, the controversial topic of equality in relation to the Right to Equality provided by the Indian Constitution necessitates thorough responses and careful discussion. To address this issue, we need legislation and regulations, but we also need a collective will to end systemic inequality and create a more just and inclusive society. The promise of equality guaranteed by the Indian constitution can only be upheld through united efforts across all domains.³²

CHAPTER- 5

CONCLUSIONS

Many people are unaware of how complex the idea of the right to equality is. The Indian Constitution seeks to establish an egalitarian society where everyone has equal access to opportunity. Indian society has improved as a result of the equality promised by the Constitution. The Indian Constitution's authors sought equality, and to that end, the courts have applied interpretations to rulings in a variety of ways. The fundamental right to equality is guaranteed under Articles 14 through 18 of the Constitution.

When taken as a whole, these rights ensure that people are treated fairly by outlawing state discrimination on the basis of caste, religion, sex, race, or place of birth. Sometimes, nevertheless, this concept is misunderstood to mean that everyone has a right to equal opportunity in every manner. Instead, it ensures that the unequal will receive unequal treatment and protection. It is the responsibility of the state to guarantee that every person has equal access to opportunities in a variety of areas, including work, education, leisure, and the utilisation of natural resources. Generally speaking, if the government infringes on someone's equality rights, they can file a complaint. But under some conditions, as those pertaining to Article 17, it might also apply to private individuals. The right to equality encompasses more than just the enjoyment of rights; Articles 17 and 18 deal with numerous obligations placed on people. These obligations guarantee the unimpeded exercise of the right to equality.

³² Gulshan Prakash v State of Haryana, AIR 2010 SC 288

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