

INTERNATIONAL JOURNAL OF LEGAL SCIENCE AND INNOVATION

[ISSN 2581-9453]

Volume 3 | Issue 5

2021

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Distinguishing Equalities in India and United States Socio-Economic Effects on Inequality

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ABSTRACT

You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'you are free to compete with all the others,' and still justly believe that you have been completely fair. In the light of this statement, the article is going to discuss the type of equalities that have emerged in two totally different countries and how socio-economic factors have played important role in such differentiation of equalities.

"You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'you are free to compete with all the others,' and still justly believe that you have been completely fair."²

~ **President Johnson**

Equality is not a vague idea or principle, but a very practical need and necessity for efficient survival of any democracy or as a matter of fact any society. However, achieving equality in the true sense is one of the most difficult tasks that framers of law undertaken through different approaches. Two of the most important approaches are formal and substantive equalities, where the former argues for fairness while treating all the people equally at all times without any discrimination while the latter goes beyond

such basic equality and identifies differences among people and tries to put everyone at a same pedestal.

Equality is generally considered to only establish the equality of every individual but its true meaning and purpose cannot be achieved unless the natural inequalities among people in a society continue to exist. Thus, in this light, even use of some form of positive discrimination is legitimate for reducing the pernicious effects of the oppression and discrimination persisting in the societies from times immemorial. This fundamental debate with regard to this issue is between the individualist and collective approach towards equality which also essentially resembles to broad idea of formal and substantive equality respectively.

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² Americanyawp.com. 2021. *Lyndon Johnson, Howard University Commencement Address (1965) | The American Yawp Reader*. [online] Available at: <<https://www.americanyawp.com/reader/27-the-sixties/lyndon-johnson-howard-university-commencement-address-1965/>> [Accessed 11 October 2021].

In this background, a very different picture of equality can be understood in the constitutional systems of United States and India which portray a classic example of both sides. Indians follow the idea of equality as a collective unit which is the result of the persistent complex social hierarchy which has been historically part of its society. Thus, for a majority of Indian true equality cannot be achieved without anathemas like Caste along with other inferiorities. While in Unites States, even though the concerns of economically backward classes or the blacks in general have still not been resolved, the idea of equality only concerns itself with the individual and gives little regard to its collective counterpart.

The Indian Constitution reflects the idea that the Indian society is essentially an epitome of inequality which can only be ameliorated by providing compensatory discrimination in favor of those who suffering it. While, on the other hand, American Constitution is essentially focused on individual rights as it reflects their assumption about being a classless nation which follows a color-blind approach, in a way focusing on formal antidiscrimination principle of equality in complete disregard of the existing social, economic and racial inequalities.

India's current position on Equality finds its origin in the existing social order in which every Indian rather than an individualistic view identifies himself/herself as a member of one or another caste group. A reference could be made to Gandhi-Ambedkar (Individualism vs Collectivism) debate to better understand the thought process of the framers of the Indian

constitution which shaped the current status of equality in India. Ambedkar's ideas about a positive or compensatory discrimination favoring Dalits ultimately found place in the constitution which could be understood as an instrument of structural change within the Indian society and as a result achieve equality in its truest sense.

The Indian Constitution embodies such group-based approach through its preamble itself where it talks about not only political justice but also economic and social while further giving equality of status along opportunities. These two broad notions of equality and justice lay the roots for constitutions commitment towards problems like caste. This approach is further supplemented by providing specific articles for realization of both formal and substantive equality to their full effect. Article 14 starts with basic formal idea of equal protection of laws to all persons along with a prohibition on denying any person equality before the law. Further, Article 15 while prohibiting discrimination completely, also embodies the collective approach to equality when it uniquely reserves power for the state to make special provisions for certain backward classes. A portrayal of similar affirmative action can also be seen in prohibition of untouchability by article 17 and abolition of use of titles by article 18. Apart from these fundamental rights, idea of group-based equality can also be found in directive principles like Article 38 which specifically talks about dealing with inequalities of status, income, opportunities and facilities even for groups of people. Furthermore, article 46 also calls for protection of weaker section like

scheduled castes and tribes from all forms of injustices and exploitations. This is supplemented by article 340 and article 335 which provide for a commission for backward classes and special consideration to SC's by reserving some seats in official posts by government respectively.

This idea behind Indian equality was explained by the Supreme Court in the case of *State of Kerala v. N.M. Thomas* (1976)³ where article 14, 15 and 16 were together understood to be a tool to achieve equality in its real sense. The court held that measure for positive discrimination through affirmative under article 15(4) and 16(4) are not just exceptions to 15(1) and 16(1) but just their supplement to help achieve the goal of equality in a more holistic manner. This approach was also used by the Mandal commission recommendations in criticizing equality of opportunity as it does not help people who start their journey for such opportunity from a very disadvantaged position. Both these ideas found further representation in the landmark case of *Indra Sawney v. Union of India* (1993),⁴ which approved many principles regarding implementation of affirmative action as a means of achieving true equality along with an approval of the Mandal commission report. Along with many subsequent judgments, this view has been recently reappeared in the 102nd and 103rd Amendments to the constitution which forms a national commission for backward classes and provides 10% reservation for economically backward classes respectively.

To a great contrast, United States has been following the concept of unique Individualism right from the origin of the nation which also provides for the basis of wide acceptance for equal opportunity principle, freedoms that they enjoy, capitalism that they accept and among other things their very idea of democracy itself. This orthodox idea of equality has been continuously challenged in the light of public awareness of inequality which finds its root in their belief that their society is classes and law is colorblind. Although, the American constitution through its preamble creates an idea of true equality by phrases like 'promoting general welfare' and 'establishing justice', but the overall emphasis on freedoms goes against the individual's duties towards the community which is necessary for achieving true equality. End of the civil war marked for the establishment of a concept of equality for the first time in the constitution through the 14th Amendment which only talks about equal protection of laws as a measure to achieve equality. Interestingly, in sharp contrast to Indian constitution, it completely ignored the existing social and economic inequalities and suddenly placed everyone at an equal footing which is grossly unjust for those who have been oppressed for ages. Shockingly, after this amendment even some protection given to blacks and former slaves were limited by the Supreme Court itself in the name of such orthodox and formal equality.

³ AIR 1976 SC 490.

⁴ AIR 1993 SC 477.

Although, the case of *Plessy v. Ferguson* (1896)⁵ provided for a collective equality by upholding segregation as separate but equal standard to help the marginalized classes, but the dissent through Justice Harlan's orthodox view has hugely influenced the future judgements where he rejected race as reasonable classification for providing affirmative action. His views reached its zenith in *Lochner v. New York* (1905)⁶ where court disregarded actual social background of the parties to a contract while embracing such orthodox view through formalities of equality as enshrined in the 14th Amendment itself. Although like Mandal commission, Moynihan report in the states tried to provide a beginning of affirmative action efforts but could not find the similar success because of the drastically different ideologies of the nations. Interestingly, even when *Brown v. Board of Education* (1954)⁷ recognized substantive equality in education, the later trends conflicted largely as in *San Antonio Independent School District v. Rodriguez* (1973)⁸ the court failed to accept economic backwardness as a class that needed affirmative action under 14th Amendment.

After studying these two systems, we found that United States follow the idea where actions of the government depend on the realities of inequalities among individuals, while Indian approach puts elimination of the effects of social or economic inequalities as its primary goal. In Conclusion, we can say that even though it is perceived that the idea of equality in the modern states found its origin in the U.S constitution, but

after a closer look it appears that such concept has been developed and broadly applied by Indian constitution to provide true meaning to the term 'equality' in both its formal and substantive forms. The contrasting views found its original background in the differing approaches of social organization that includes group as a basic unit for Hindu conception and individual for the west. Even though the Indian approach seems to give effect to equality in a much better and broader way, any absolute expansion towards any of these approaches is going to disturb the equality to a greater extent. A balanced approach is advisable to help the marginalized groups first come at the level of others so that the individualistic approach could be adopted after doing away with all the group inequalities.

⁵ 163 U.S. 537 (1896).

⁶ 198 U.S. 45 (1905).

⁷ 347 U.S. 483 (1954).

⁸ 411 U.S. 1 (1973).