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THE CONCEPT OF EQUALITY: A BRIEF STUDY

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ABSTRACT

All human beings are equal according to the law of nature which desired that every man should be treated as equally as a human creature. Equality is considered synonymous with 'natural equality' which implies that all men are equal. Equality means equal concern and respect across differences. It implies the absence of arbitrary powers. The concept of equality is fundamentally a leveling process which implies the absence of special privileges and the presence of adequate opportunities. The concept of equality is dynamic in nature as it deals with different aspects of the society. Today, every modern political constitution has some notions of equality inscribed as a fundamental law. The object and significance of this paper is to analyse the concept of equality, how this concept developed, what are its various aspects and dimensions in the present scenario and the place of equality under the different constitutions of the world. This paper will prove to be helpful for those who want to study the concept of equality in a brief manner. For the purpose of this paper the doctrinal approach of research has been adopted and for this purpose various books, journals, articles and some websites have been consulted.

KEYWORDS

Demand and Struggle for equality, Dimensions of equality, Egalitarianism, Equality under different constitutions, Concept of equality.

INTRODUCTION

 f all the basic concept of social, economic, moral and political philosophy, none is more confusing and baffling than the concept of equality because it figures in all other concepts like justice, liberty, rights, property etc. During the last two thousand years, many dimension of the concept of equality have been elaborated by Greek, Stoics, Christian fathers who separately and collectively stressed on its one or the other aspect.

The doctrine of legal equality goes back to the natural law doctrine of the Stoics which in the name of the universal reason, postulates equality of individuals, races and nations. This was accepted by Roman jurisprudence, though sometimes with a distinction between the law of nature which postulates absolute equality and the law of nation which recognizes slavery. Christian doctrine, too, is pledged to the fundamental equality of men but this fundamental equality is subordinated to the acceptance of the existing social order.

Equality is essentially a modern and progressive concept and the value of equality can be taken as a criterion of radical social change. A feature of modern societies is that they are committed to the principle of equality and they no longer regard inequality as naturally justifiable or divinely ordained. Under the condition of modern state, it is 'inequality which requires justification and not equality'.

THE CONCEPT OF EQUALITY

So close is the involvement of the concept of equality with the theme of rights, liberty, fraternity, property and justice that it has become a 'multiple dimensional concept' so much so that "of all the basic concepts of social, moral and political philosophy, none is more intriguing and none is more baffling than it."¹ Realizing this difficulty, an eminent English political scientist like Laski has confessed that no idea is more difficult to be defined in the whole realm of political science than the concept of equality.

The idea of equality is closely related to the theory of natural right. The state of Nature, declared Locke, is "a state also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another, there being nothing more evident than creatures of the same species and rank, promiscuously born to all the same advantage of Nature, and the use of the same faculties should also be equal one amongst another, without subordination or subjection..."; And the law of Nature "teaches all mankind that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions."²

The concept of equality has the different aspects which are as follows:

a. Equality-Fundamentally a Leveling Process

The Ideal equality is fundamentally a leveling process. J.A. Corry explains it in the following words "The idea of equality has insisted that men are politically equal, that all citizens are equally entitled to take part in political life to exercise the franchise. It has insisted that individual shall be equal before the law that when the general law confers rights or imposes duties, these rights and duties shall extend to all; or conversely that the law shall not confers special privileges on particular individuals or groups."³ Laski says undoubtedly it [equality] means that no men shall be placed in society that he can overreach his neighbor to the extent which constitutes a denial of the latter's citizenship.

¹ Frank Thakurdas: "In Defence of Social Equality", reproduced in *The Indian Journal of Political Science*, Vol.XXXVII, No.1, 1976, p.1

² John Lock: *Second Treatise of Civil Government*, Chap.II, pp.118-19.

³ J.A. Corry: *Democratic Government and Politics*, p.153.

b. Equality- Absence of Special Privileges

Equality also means that there should be no special privileges for any one. All barriers of birth, wealth, caste, creed and colour should be removed so that no one suffers from any kind of social or political disabilities. There should be no difference between a man and a man "whatever right's inhere in another by virtue of his being a citizen must inhere, and to the same extent in me also."⁴ It means that all individual are entitled to the enjoyment of all social and political privileges to which others are entitled. To refuse any one access to an office of the state is a denial freedom, because it causes frustration and ultimately leads to the loss of creative faculties.

c. Equality – Implies Presence of Opportunities

The presence of adequate opportunities is an essential prerequisite of equality by adequate opportunities we do not mean equal opportunities. All that is implied by adequate opportunities is that the state should provide suitable opportunities for all citizens without any discrimination for the full development of their intelligence. No person should be debarred from achieving the ambition of his life, if he possesses the requisite ability to and intelligence for that purpose. Therefore we can say that the principle of equality is attained if the state is able to create such conditions in which all have due opportunity to develop their ability and personality to their full stature.

Therefore, equality involves first of all absence of legal discrimination against any one individual, group, class or race. Secondly it implies equal claims to adequate opportunities for all and the recognition of the fact that no one, person or group may be sacrificed to another.

MEANING AND CONNOTATION OF THE TERM EQUALITY

The term 'equality' is understood in, many ways: it has several facets; it can not be described easily. Equality is great democratic ideal. Equality is considered synonymous with 'natural equality' which implies that all men are created equal and all should be entitled to identity of treatment. The protagonist of this view asserted that all men are born equal and nature has placed them to remain so.

According to *Oxford English Dictionary*, equality implies (a) the condition of having equal dignity, rank or privileges with others, (b) the condition of being equal in power, ability, achievement, or excellence, (c) fairness, impartiality, due proportion, proportionateness.

The 'representative thinker' of the social contract school held that the law of Nature "teaches all mankind that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions."⁵

The Founding Fathers of the American revolution adopted a Declaration of Independence in 1776 that "... all men are created equal, that they are endowed by their Creator with certain unalienable rights." Likewise the National Assembly of France adopted the Declaration of the Rights of Man and Citizen in 1789 which reiterated that "all human beings are born free and equal in dignity and rights."⁶

Article 1 of Universal Declaration of Human rights, 1948 declares that "all human beings are born equal." And Article 17 of the same Declaration provides "equality before the law and without any discrimination equal protection of law."

Dr. Appadoria points out: "Nature has endowed men with different capacities and so long as they differ in their want, needs, and capacity in satisfying them, equality in its popular sense is inconceivable. Equality does not even imply identity of reward for effort. The statement that all man are equal is erroneous as that the surface of the earth is level."⁷

According to Sir Ernest Barker, the term equality means that equal condition should be guaranteed to each for making the best of himself. Accordingly it "means that whatever conditions are guaranteed to me, in the form of rights, shall also, in the same measure, be guaranteed to others, and that whatever rights are given to others shall also be given to me."⁸

DEMAND FOR EQUALITY

The demand of equality has always against the prevailing inequality of the times. The existence of social inequality is probably as old as human society and the debate about the nature and causes of inequality is an ancient topic of political philosophy. The medieval feudalism had legal privilege based upon status and birth which were supported by Christianity. In fact the pre-eighteenth century teachings argued that men were naturally unequal and that there was a natural human hierarchy. Different ideologies justified inequality on grounds of superior race, ancestry, age, sex, religion, military strength, culture, wealth and knowledge.

Under feudalism the society was divided into three estates: clergy, nobility and the common masses. The first two enjoyed all rights and the third state had only duties. During this period these social inequalities got legal recognition. Legal privileges meant only for clergy and the aristocracy was widely acclaimed. Even in modern societies there is a continuity of inequality despite the new ideology of equality as the basis of citizenship. Inequality in universal, endemic and resistant to social policies aimed at bringing about a substantial measure of equality.⁹

DEVELOPMENT- STRUGGLE FOR EQUALITY

In the history of western political ideas, the doctrine of equality is practically as old as it's opposite. After the death of Aristotle in 22BC the most prominent star of the Greek philosophy was Zeno who founded the stoic school and supported equality among men. The stoic philosophers gave the idea of universal brotherhood and they were opposed to slavery. The promulgation of the law of the people by the Roman Empire was another way in which the Romans attempted to give effect to the principle that all men are equal and as an extension to that they conferred citizenship both on the individuals and the entire communities.

The revolutions in Britain in 1649 and 1688, in USA in 1776 and in France in 1789 made right to equality by birth as their central plank. 'Men are born free and equal and they are free and equal in their rights'. By nature and before the law, all men are equal. During this phase the demand for equality coincided with the abolition of special privileges of the nobility and the achievement of political and legal equality with the nobility. It meant only juristic equality i.e. all men are born equal and they are equal before law.

The main precipitating cause for equality in the nineteenth century was undoubtedly economic. The economic and social dimensions of equality which emerged during this phase were the result of conflicts and struggles between the capitalist/industrial/feudal classes on the one hand and the workers and peasants on the other. The Laissez faire policy of the state in the economic affairs created wide economic disparities in the society. As a result along with legal equality, demand for economic and social equality was raised by liberal, socialist and Marxist writers alike such as J.S. Mill, T.H. Green, Babeuf, Karl Marx etc. Simultaneously, the demand of political equality also grew stronger. The reform Acts of 1832, 1876 and 1884 in Britain were steps towards political equality.

The Declaration of Human Rights in 1948 extended the recognition of equality and contributed to the eventual emergence of an international society based upon socio-economic equality.¹⁰

⁴ Harold Laski: Op. cit., pp. 154-55.

⁵ John Lock: *Second Treatise of Civil Government*, Chap.II, pp.18-19.

⁶ Benn and Peters: *Social Principles and the Democratic State*, p.107

⁷ A. Appadorai: *The Substance Of Politics*, p.93

⁸ Barker, *op. cit.*, p.151.

⁹ R.C.Vermani: *An Introduction to Political Theory*, p.239-40.

¹⁰ R.C.Vermani: *An Introduction to Political Theory*, p.241-43.

EGALITARIANISM- CONCEPT

Egalitarianism (from French *égal*, meaning "equal") is a trend of thought that favors equality of some sort among living entities. Egalitarian doctrines tend to maintain that all humans are equal in fundamental worth or social status. It is defined either as a political doctrine that all people should be treated as equals and have the same political, economic, social, and civil rights or as a social philosophy advocating the removal of economic inequalities among people or the decentralization of power. An egalitarian believes that equality reflects the natural state of humanity.

A democratic, universalistic, caring and aspirationally egalitarian society embraces everyone and accepts people for who they are. To penalize people for being who and what they are is profoundly disrespectful of the human personality and violatory of quality. Equality means equal concern and respect across difference. It does not presuppose the affirmation of self, not the denial of self. Equality therefore does not imply a levelling or homogenization of behavior or extolling one form as supreme and another as inferior, but an acknowledgement and acceptance of difference. At the very least, it affirms that difference should not be the basis exclusion marginalization and stigma. At best, it celebrates the vitality that difference brings to any society.¹¹

An understanding of the meaning of egalitarianism is necessary in order to grasp the correct nature of the ideal of equality. Here it means that equality is no substitute for uniformity. The earliest use of the term 'equal', still widely adopted in everyday language, was to refer to identical physical characteristics. In political theory, however, a clear distinction is made between equality and ideas such as 'uniformity', 'identity' and 'sameness'. The goal of egalitarians is to establish the legal, political or social condition in which people will be able to enjoy equally worthwhile and satisfying lives. Equality, in other words, is not about blanket uniformity, but rather is about 'leveling' those conditions of social existence which are thought to be crucial to human well-being.¹²

DIMENSIONS OF EQUALITY

The concept of equality is a 'multi-dimensional concept'. It has been changing with changing times. Accordingly, different writers too have been laying emphasis on its changing equality; Barker laid emphasis on legal and social dimensions of equality. In more recent times Laski also considered the political and economic dimensions of equality. We discuss below the more important and relevant dimensions of equality as follows-

- (a) **Natural Equality:** It implies that nature has made all men equal. In ancient times the Stoics of Greece and Roman thinkers like Cicero and Polybius insisted that all men were equal according to the law of nature. Marx desired that every man should be treated as equally as a human creator.
- (b) **Legal Equality:** The concept of legal equality is very old concept. The ancient Greeks spoke of isonomia or equality before the law as we understand it now. In the eighteenth century the demand for equality was raised to eliminate the legal privileges of the aristocratic and feudal classes. Equality, for the French revolutionaries really meant equality before the law, the same law for all and no privileged classes or individuals exempt from its provisions. Even today, equality before law is considered as an indispensable ingredient of the legal dimension of equality. Although 'equality before law' implies equality of rights and duties in law, it does not mean that all men and women ought to enjoy the same rights and duties. It is simply not possible because men differ in ability and capacity; and there is considerable specialization and division in function society. What 'legal equality' implies is that the law does not make a distinction between men either on the basis of their political opinions or religious beliefs or it is passed to benefits one class of people at the expense of another. Legal equality means that all citizens should be treated alike in the matter of possession of rights. Its basic, therefore, is egalitarian.
- (c) **Political Equality:** It connotes equal political rights to all the citizens; and equal voice in government and equal access to all offices of authority, provided the necessary qualification is fulfilled. In other words, political equality implies that all the citizens enjoy the same political rights the right to vote; the right to contest election; the rights to hold public office; and the right to criticize government without any distinction on the basis of caste, colour, sex, religion, language, etc. In short, it implies the prevalence of democracy and universal suffrage. As Cushman has said: "In practice the ideal of political equality has centered on universal suffrage and representative government modern democracy in short
- (d) **Social Equality:** In modern times the social dimension of equality has acquired much more importance than its purely legal or political interpretation. It is because of the realization that discrimination among people on the basis of caste, colour, language, sex, education or social status hinders the development of human personality. It is also realized that the social status hinders the development of human countries are fraught with dangerous consequence for humanity as a whole. Thus, the realization of 'social equality' is a cherished goal and ideal of the people. Social equality means that all citizens are equally tangible unit of society and no one is entitled to special privileges. It means equality of status and absence of class or social barriers and invidious social discrimination. It implies no distinction in the social status of people because of difference in race, colour, rank, class or caste, that is, exists no unnecessary social restraint which retards the growth of individual and the realization of his ambition of a good and happy life. Social equality exists when all have an equal opportunity to standing and develop the personality. How do we achieve 'social equality'? It is a very complex proposition. However, Bann and Peters opine the 'equality of opportunity' is an important element for the achievement of this ideal means that the least able and the most able are given an equal start in race for success. It means that each citizen must have equality of opportunity for the development of his personality.
- (e) **Economic Equality:** Economic equality is considered to be the hallmark of true democratic states in modern times. It is a prerequisite for the existence and enjoyment of other equalities legal political and social- in society. The talk of equality in country is meaningless if there is unjust and glaring inequality of the distribution of wealth income and wages: and the vast majority of people suffer from economic strains stresses and handicaps. Wealth provides all kinds of opportunities to those who own it. To make economic equality meaningful and a reality the state has to give it a prominent place in its priorities. Economic equality, generally speaking implies that 'economic cause' should not become a hindrance for the development of the personality of any individual in its varied aspects- moral, physical, intellectual- in society. Economic equality can exist, when all people have responsible economic opportunities to develop themselves. Adequate scope for employment reasonable wages, adequate leisure and other economic rights create economic equality.
- (f) **International Equality:** It means the extension of the principle of equality to the international sphere. All nation of the world should be treated equality irrespective of their demographic, geographical, economic or military composition. That is, the principle of internationalism requires that all nation of the world should be treated on identical terms whether they are big or small in terms of their size, location, resources, wealth military potential and the like. In economic terms its demand that the benefits of scientific and the technological achievement should be shared by all. In terms of humanism, it implies that traditional evils like those of slavery, forced, primitive backwardness and the like should be eradicated.

LASKI'S VIEW OF EQUALITY

To Laski, equality does not mean either 'absolute equality' or 'identity of treatment'. It also does not mean 'identity of reward' because human wants, needs and capacity differ. All that equality means is a certain leveling process. What is required is that there should be equality at minimum basis.

According to Laski, equality means that adequate opportunities for self development are provided to all in society. Adequate opportunities do not imply equal opportunities. What they do mean is that all those opportunities should be given to individuals which are considered to be essential for their growth and the absence of which results in frustration. It means that all the individuals must be guaranteed certain minimum rights. It is only when the urgent claims of all have been fulfilled that we may accept the particular claims of others. The differences in social and economic position of men can be accepted only after a minimum basis of civilisation is achieved by society as a whole. Everyone must have a basic minimum standard of living before the special requirements of others are provided for.

¹¹ Minister of Home Affairs and O'rs v. Faure & Bonthus; Lesbian and Gay Equality Project and O'rs v. Minister of Home Affairs and O'rs (2005), Cases CCT 60/04, 10/05, per Sachs J, para 60.

¹² Andrew Heywood: *Political Theory: An Introduction*, p.285.

Laski opines that there can be no equality if there are special privileges for some in society. Every person must be treated as equality before law. There is no moral justification for the existence of any privileges based upon birth or property. Every individual must have equal opportunity for progress, growth and self development.¹³

THE MARXIST VIEW OF EQUALITY

The Marxist has not formulated any coherent concept of equality as such. Now here, Karl Marx or Frederic Engels have adequately explain the idea of equality there for, there view of 'equality are the outcome of the overall philosophy of Marxism-a scientific analysis of the existing *bourgeois* state and their goal of establishing a 'classless' and 'stateless' society.

The Marxist maintain that 'inequalities' in society emerged with the emergence of the 'concept of private property' which, in turn, is inextricably wound up with the concept of classes-the 'haves' and the 'have-nots', or the 'exploiters' and the 'exploited'. Presently these classes are the *bourgeois* and the *proletariat* or the capitalists and the worker. Also, the present capitalists state is a 'class state'- its laws and inequalities society. In other words, the existence of classes is *sine pro quid* for the existence of inequalities. Therefore, for the Marxist equality implies the abolition of classes. Engels says: "the real content of the proletarian demand for equality is the demand for the abolition of classes."¹⁴ And, it can only be achieved through revolution; the dictatorship of the proletariat; and the establishment of the communist society.

EQUALITY UNDER DIFFERENT CONSTITUTIONS

- a. **America:** The American Declaration of Independence (1776) says that "all men are created equal." The Fourteenth Amendment of the American Constitution guarantees "equal protection of laws" which means subjection to equal law, applying to all in the same circumstances without discrimination.
- b. **Switzerland:** Articles 7 to 40 of the Swiss Constitution deals with the fundamental rights of the citizens. Article 8 assures equality before law to the citizens. It guarantees equal treatment to all the citizens.
- c. **Canada:** The Constitution Act of 1982, made the most important contribution by adding a Charter of Rights and Freedom in the Canadian Constitution. It includes Equality Rights that there shall be no discrimination on ground of race, religion, ethnic or national origin, sex, age, or mental or physical disabilities.
- d. **Russia:** Article 2 of the Constitution of Russian Federation 1993, clearly lays down that human, their rights and freedom are of supreme value. Article 19 of the Constitution deals with 'right to equality' which provides that (1) All people are equal before law and in the court of law. (2) The State guarantees the equality of rights and liberties without any discrimination. (3) There is equality of rights and liberties between men and women.
- e. **Japan:** The Constitution of Japan provides the 'right to equality' which says that all the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.
- f. **China:** In the People's Republic of China, all citizens are equal before law. Article 3 of the Constitution says: "The People's Republic of China is a single multi-national state." All the nations are equal. Under Article 10, women have equal rights in the possession and management of family property. Under Article 48, women in China enjoy parity with men in all fields- political, economic, cultural and family life. The principle of equal pay for equal work for both men and women is followed in China.
- g. **India:** Article, 14, 15, 16, 17, 18, 38 and 39 of the Indian constitution deals with the nation of equality. Article 14 embodies the general principle of equality before law and prohibits unreasonable discrimination between person. Article 14 declares that, "the state shall not deny to any person equality before the law or of India. Article 14 embodies the idea of equality expressed in the preamble of the constitution. The succeeding article; 15, 16, 17, 18, 38 and 39 lays down specific application of the general rules laid down in Article 14, Article 15 relates the prohibition of the discrimination on the ground of religion, race, caste, sex or place of birth. Article 16 guarantees the equality of opportunities in matters of public employment. Article 17 abolishes 'untouchability'. Article 18 abolishes 'titles'. Article 38 deals with the principles of policy to be followed by the state for securing social justice and Article 39 deals with the principles of policy to be followed by the state for securing economic justice.

The concept of equality as incorporated in Article 14 does not mean absolute equality among human beings which is physically not possible to achieve. It is a concept implying absence of any special privilege by reason of birth, caste, creed, religion, sex or the like in favour of any individual and also the equal subjection of all individuals and classes to the ordinary law or the land.

Dr. Jennings in Law of the Constitution says that equality before the law means "that among equals the law should be equal and should be equally administered" that the like should be treated alike. Article 14, therefore, says that the distinction should be made between similar and dissimilar i.e. equals should be treated equally and unequal unequally.

JUDICIAL RESPONSE

In *E.P. Royappa v. State of Tamil Nadu*,¹⁵ Bhagwati, J., delivering the judgement on behalf of himself, Chandrachud and Krishna Iyer, JJ. 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 doctrinaire limits. Equality is antithesis to arbitrariness. In fact equality and arbitrariness are sworn enemies; one belong to rule of law in a republic while the other, to the whim and caprice of an absolute monarchy. Where an act is arbitrary, it is violative of Article 14."

In *Maneka Gandhi v. Union of India*¹⁶, Bhagwati, J., said- "equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment.

In *International Airport Authority case*,¹⁷ 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."

CONCLUSION

Democracy is founded on the principle that each individual has equal value. Treating some as automatically having less value than others not only causes pain and distress to that person but also violates his or her dignity as a human being. Equality is a great democratic ideal and is considered synonymous with 'natural equality' which implies that all men are equal. "What we really demand, when we say that all men are equal, is that none shall be held to have a claim to better treatment than another." The 'concept of equality' implies that *equals should be treated equally, and unequals unequally*, and the respect in which they are considered unequal must be relevant to the differences in treatment that are under specific consideration. If there is a norm that equal pay should be given for equal work, it is also needed that work done should be equally well.

The idea of equality is fundamentally a leveling process. It insists that individual shall be equal before law that when the general law confers rights and imposes duties, these rights and duties shall extend to all. The law shall not confer special privileges on particular individuals or groups which mean that the concept of equality implies the absence of special privileges. Equality does not mean identical treatment as there can be no similarity of treatment so long as men are different in their want, need, talent and capacity. Equality implies the presence of adequate opportunities; all that is implied by the term 'adequate opportunity' is that the state should provide suitable opportunities for all citizens without any discrimination for the full development of their intelligence. No person should

¹³ Harold Laski: *Op. cit.*, p.154.

¹⁴ L.Lenin: *Collective Works*, Vol.29. p. 358.

¹⁵ AIR 1974 SC 555

¹⁶ AIR 1978 SC 597

¹⁷ R.D.Shetty v. Airport Authority, AIR 1979 SC 1628

be debarred from achieving the ambition of his life, if he possesses the requisite ability to and intelligence for that purpose. Equality implies the absence of arbitrary power i.e. power must not be exercised arbitrarily.

Thus, the principle of equality means that whatever conditions are guaranteed to an individual, in the form of rights, shall also in the same measure, be guaranteed to others, and that whatever rights are given to others shall also be given to that individual.

G. Sartori, in his book Democratic Theory, has pointed out that, "equality has so many facets and so many implications that after we have examined it from all angles we are left with a feeling of not having really mastered it."

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