



The Illusion Of Sameness- Concept Of Equality

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ABSTRACT

The concept of “Equality”, has always been a topic of greater discussion and argument. Almost all the countries in the world have had a group of people or community that has faced unequal treatment or discrimination, so this concept is related worldwide. In Western society, unequal treatment was usually based on class, and here, in Indian society, it was based on caste almost every country whether Western, European, Asian, etc, has seen inequality based on gender. To understand the term “Equality”, one needs to understand its meaning, Equality is the fairness, sameness, identity, and uniformity in the treatment provided to people. Equality, as Laski says is “coherence of ideas”. Equality doesn’t mean that there must be economic equality, it means that even though one is poor and the other one is rich justice must be served equally not based on the status or how strong the person financially is.

In India Equality is a very important and crucial concept, as after centuries of unequal treatment based on caste, religion, gender, race, and place of birth the need for equal treatment to all after independence was felt. The makers of the constitution added the Right to Equality in Fundamental Rights, which extends from Article 14 to Article 18. Here, equality is defined in two ways, the first being equality before the law and the other one being equal protection of the law.

The other concept that prevails is “Equity”, it may sound similar to equality and it is somewhat the same, but there exists a very crucial difference. “Equality”, basically means the same treatment for everyone, without seeing the economic status, gender, caste, or class, whereas, “Equity”, is treating people somewhat differently but based on the needs or abilities to provide equal opportunity. However, none of the above concepts guarantee equality of outcomes. The principle of “Equity” is based on the thought that equality cannot be achieved if everyone is treated in the same manner, it can thus, be achieved if people are treated equitably. The concept is basically to uplift the weaker section and provide the opportunity. As said “Equals should be treated equally, one cannot treat unequal like equals”. It is a kind of positive discrimination, reasonable classification, and reasonable discrimination. The best example of equity in India is the reservation system.

The Study will focus on the basic concept of equity and Equality, with special focus on reservations and gender differences. It will also highlight the key areas of differences of equity and equality.

KEY WORDS- equity, equality, reservation, gender discrimination, women rights bill 2023.

INTRODUCTION

Equality is the basis of principles of natural justice, it also ensures justice by the concept of “audi alteram partem”, which is “let the other side be heard as well”, similar to this is the concept of Equality where no one is considered to be superior before law but the law itself is supreme¹. Similarly, to make people equal there must also be concept of “Equity”, which is to level up the weaker sects of society. The constitution of India states that no person shall be discriminated on the basis of Caste, religion, race, sex or place of birth. In India Caste has been the supreme reason for the discrimination, in ancient India concept of Varnas prevailed where 4 categories based on occupation was divided that were; Brahmins, Kshatriyas, Vaishyas, and Shudras. The Shudras were considered to be untouchable, they were not allowed to even draw water from well. The next category is the religion, India being the land of many saints who were born here, this also marks many religions that prevailed here over centuries, the diversity here can be seen in terms of religion as well, even the independence that country got came with partition of the country that too on the religious basis, so to avoid this any further and ensure all the religions safeguard the constitution makers marked that no person can be discriminated based on religion. Thus, religion is not the test of citizenship. The another mention is of race, there are many races that exist in India like; Afgani, Aryans etc. so, no one can be discriminated on this as well. The next mention is not something only limited to India but is a matter of discussion and discrimination worldwide, that is gender based inequality, and the last one is place of birth based on which one cannot be discriminated.

Equality is that concept where everyone is equal before the law and has equal protection of the law, Justice here is not served on what status the person holds, or how financially strong one is. In India, the “Right to Equality”, is the fundamental right that covers Articles 14 to 18. The Constitution protects equality before law and equal protection of laws. Equality before the law prohibits the unequal treatment of anyone it is generic, and it grants sameness and uniformity, for example- “lady justice”. It is based on the “Rule of Law”, which states the supremacy of the law as given by A.V. Dicey, it states that justice is impartial². The second phrase is “Equal protection of the law”, it is the demand for equal treatment, it is an American concept based on positive discrimination and reasonable classification. There are 3 tests of reasonable classification used in India-

1. Classification must be found on intelligible differentia.
2. Intelligible differentia must have a rational relationship to the object that is sought to be achieved.
3. There must be a nexus between differentiation and the object of the act.

¹ Jeffrey M. R. Duncan-Andrade, “ Equality or equity- towards a model of community responsive education” (book published on 27 July 2025)

² Shreya Tripathi “Rule of Law”, article on ipleaders.in (visited on 17 July 2025)

Thus, the second phrase focuses on “Equity”, which ensures fairness. In India society was discriminated against based on caste³, there existed 4 groups based on occupation at the beginning and later these groups became the reason for unequal treatment that prevailed in the society. To uplift the group at the bottom of the hierarchy, after independence reservations were given to Scheduled Caste and Scheduled Tribe, this is thus, an example of “Equity”. Recently, a women's reservation of 33%⁴ bill was passed, this was to bring equality to women.

The caste system in India gave rise to the practice of “Untouchability”, for this a special Article in fundamental rights was inserted which is Article 17. It is an offensive article that forbids and punishes the offender. The practice of Untouchability in any form is abolished. It is a non-bailable offense.

HISTORICAL BACKGROUND

The advent of British Rule in India began on August 24, 1608, when they first landed on the Indian subcontinent as traders in spices. Spices, during that period, were considered a very important commodity in Europe due to their usage in preserving meat. The fourth Mughal Emperor Jahangir allowed the British East India Company to trade in India. However, it was in the year 1757, after emerging victorious against the Nawab of Bengal in the Battle of Plassey that they were able to establish themselves in the country.

What followed after was a series of traumatizing experiences for the colonial subjects in terms of poverty, malnutrition, disease, cultural upheaval, economic exploitation, and political disadvantage which were all aimed at creating a sense of social and racial inferiority and discrimination against the Indians at the hands of their British colonizers⁵. It is evident how the concept of “equity” or even “equality” was non-existent at this point.

This arduous struggle caused due to inequality is what led to our constitution makers forming what is perhaps the most significant Fundamental Right of all, the “Right to Equality”. Under The Constitution of India, 1950, the rights concerning equality have been mentioned under Articles 14, 15, 16, 17, and 18. The right to Equality ensures equality of opportunity and treatment to all citizens, without discrimination based on caste, religion, sex, or any other grounds⁶.

On one hand, where the British colonizers sought to exploit the Indian masses by dividing them based on race, caste, color, sex, religion, or culture, our Constituent Assembly aimed at creating an India where people would rise out of these discriminatory constraints and everyone would be granted equal status. The concept of “equality before law” is of British origin from the “Magna Carta” which is the pact or charter of the rights signed in the UK regarding the prohibition of monopolistic power of states. It provides for the following-

³ Joseph E.Schwartzberg, R. Champakalakshmi “Caste of India- In India In People”, article on Britannica.com (visited on 17 July 2025).

⁴ The Constitution (106th Amendment) Act, 2023.

⁵ Bipul Mandal “British policy of ‘protective discrimination’ and its impact: A case study on the underprivileged section of the society in Bengal”, article on ensembledrms. in (visited on 20 July 2025).

⁶ Surjit Das, Dr. Shyamasree Sur, “Unveiling the legacy: British Colonialism and human rights in India”, article on chapters.redshine.in (visited on 20 July 2025).

1. Absence of any special privileges in favor of any person
2. Equal subjection of all persons to the law of the land administered by law courts
3. No person, despite their economic or social advantage, is above the law

On the other hand, “Equal protection of laws” is a concept borrowed from the American Constitution as per Section 1 of the 14th Amendment Act of the US Constitution. It connotes-

1. Equality of treatment under equal circumstances, both in privileges conferred and liabilities imposed by the laws
2. Similar application of the same laws to all persons who are similarly situated
3. For like to be treated alike without any discrimination

EQUALITY VS EQUITY- THE MAJOR DISTINCTION

According to Thomas Jefferson, “There is nothing more unequal than the equal treatment of unequal people.” Article 14⁷ provides for all the right to equality before the law and equal protection of the law. It can also be referred to as the Equality Principle. It prohibits discrimination on grounds of religion, race, caste, sex, or place of birth. It means that the law treats everyone equally without consideration of their rank or status or other backgrounds.

The principle of equality means that one uniform law cannot be applied to all equally as some may not be placed on a similar level as others. Equality means relative equality, namely the principle of treating equally what is equal and unequally what is unequal. Therefore, equality treats equals similarly and unequal differently. The Supreme Court held that while Article 14 forbids class legislation, it permits reasonable classification of persons, objects, and transactions by the law. Reasonable classification can also be referred to as positive discrimination.

But the classification shall not be arbitrary, artificial, or evasive. It must always rest upon some real and substantial distinction, having a reasonable relation to the object sought to be achieved by the legislation. For there to be a case of reasonable classification, the fulfillment of two conditions is crucial. The conditions established by the Apex Court in **Saurabh Chaudhari v Union Of India** in this regard are as follows-

1. The classification must be founded on intelligible differentia which distinguishes persons or things that are grouped from others left out of the group.
2. The basis of the difference shall be that the object and the classification are two distinct things. There must be a nexus between the basis of classification and the object of the act which makes the classification.

It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.

Reasonable classification’s scope is defined by its capacity to support specific regulations or legislation tailored to certain circumstances, acknowledging the inherent diversity among individuals. Treating them

⁷ The Constitution Of India, 1950.

equally would result in unfairness, thus, providing special treatment to specific groups promotes social welfare and justice. The doctrine of reasonable classification is instrumental in justifying such discrimination, allowing the legislature to formulate laws that address social inequalities and challenges faced by various communities⁸.

Examples of Reasonable Classification include- The Prohibition of Child Marriage Act 2006 prescribes the marriage age of a girl as 18 years and that of a boy as 21 years, this restricts a minor from getting married. This example draws a distinction based on age to the question of the prohibition of child marriage. However, if the marriage between two parties were to be disallowed based on the classification of religion, race, caste, sex, or place of birth, it would amount to discrimination and breach of the right to equality.

The Child Labor (Prohibition and Regulation) Act, of 1986, applies specifically to children below 14 years, safeguarding them from hazardous employment.

The Maternity Benefit Act, of 1961, extends only to pregnant working women, recognizing the unique needs of expectant mothers. This signifies a reasonable classification justified by the intelligible differences between men and women, acknowledging the specific care and rest required during maternity.

Article 14, thus, enables a reasonable classification to ensure equitable treatment for diverse segments of society.

GENDER EQUALITY AND CURRENT SITUATION OF WOMEN IN INDIA

There are numerous kinds of differences that exist in our society, most of these distinctions can be erased from society with development and over a period of time, like an economically weak person's condition can change or even like the class system in the Indian society has changed over the years and hopefully in the future it will completely disappear. But there is one difference that is present in every society, and because its nature is biological, it cannot change: that is the 'gender difference'.

Gender is merely a biological difference, but as seen through the corridors of time, it is one of the causes of discrimination in almost every nation. Not only in the past but even today, in fact in Eritrea, women are still not allowed to vote. In England, too, which has a queen, women had to start movements for equality in the late 19th century and organise protests for equal pay as men and right to vote⁹. This issue still prevails in society, in India, even today, many women are not allowed to study and work. There have been significant achievements in doing away gender inequality but this still prevails today. So, to uplift women, it is not fair to give same opportunity to men and women to come ahead, and get a better position in society.

The 106th Amendment in the Constitution of India in 2023, that is "Nari Shakti Vandan Adhiniyam" bill, also known as "Women Reservation Bill" aims to reserve one-third of the seats in the Lok Sabha and the state legislative assemblies. It defines a 33% women's reservation that will continue for 15 years. This is a step taken by the government to ensure the active participation of women in decision-making. But apart from this bill, there is another bill at the local level, that is 'Women Panchayat Bill' that aims to increase participation

⁸ Diva Rai "Doctrine of reasonable classification", article on ipleaders.in (visited on 22 July 2025).

⁹ The Editors of Encyclopaedia Britannica "women's suffrage", on britannica.com (visited on 23 July 2025).

of women at the panchayat level, and in some states, this reservation is up to 50%¹⁰. But it is seen that even though in villages it is women who is sarpanch, still the decision making is done by her husband, this act is famously known as “Proxy Sarpanch”, and it defeats the purpose of the bill, then the women remains only a nominal sarpanch to sign the official document and all other steps are taken by her husband. Thus, this shows how making or passing legislation is not enough to bring equality and uplift women but it needs strict implementation too.

CONCLUSION AND SUGGESTIONS

Thus, equal treatment to unequal makes the gap of difference between the two more severe. Both the concepts “equality” and ‘equity’ might sound the same, but have different approaches to fairness. Equality means the same for all, whereas equity is like should be treated like, and unlike should be treated alike. This can be very well understood with an example, where there are two students, A and B. B is blind, and both of them are given a textbook to read; this thus shows unfairness to B. To make it fair, B should be given Braille. Similarly, in society, to come out of the cycle of differences, the approach towards the people at underprivileged level should be different and needs for effort and help than that of people who are already designated. Reservation is one such way that uplifts the weaker sections of society. It has helped many weak sects like the scheduled caste and the scheduled tribe to emerge and boost the representation. Thus, resources vary as per the needs of people in equity, and equality on the other hand provides same resources and opportunity to people of all sects. Equity aims to promote inclusion and equal opportunity in society, whereas equality aims at equal distribution of all the resources. Equity ponders on the historical disadvantages too, however equality on the other hand has equal and same starting points for all. Equity also recognizes the diversity which may be economical, social or biological, but equality emphasizes on sameness and uniformity, it views everyone as same. Thus, Equity considers specific circumstances and disparities, addressing systematic inequalities and barriers, while equality doesn’t distinguish and it provides same platform to all. It can be understood that equity helps to bring equality, whereas equality to unequals may bring disparities.

¹⁰ Economic and Political weekly- engage “Women,s reservation act of 2023: A symbolic gesture or significant stride towards empowerment?” on epw.in (visited on 25 July 2025).

The researchers would like to put forward the following suggestions;

1. Nexus to the objective- The aim of law should be the primary focus of the distinction to be made between groups. If a specific problem is to be addressed, the classification should be relevant to that problem.
2. No Arbitrary discrimination-Arbitrariness and discrimination should be strictly prohibited when it comes to providing equity for all. These factors do not have any logical connection to the law's purpose.
3. Re-examination of the Application of Reasonable Classification-Strict scrutiny should be applied by the courts to ascertain that the classifications made by the State do not reinforce systemic disadvantages in terms of marginalised groups.
4. Focus on Substantive Equality over Formal Equality-The main focus of the policies should be not only on equal treatment but equal outcomes as well. Structural barriers and targeted support need to be recognised.
5. Expansion of Legal Aid and Awareness- Legal literacy campaigns and accessible legal aid services are essential to empower marginalised communities to assert their rights.
6. Encouraging Inclusive Representation-The voices of the disadvantaged communities need to be represented in policy making bodies, judiciary, and public institutions.

