

RIGHT TO EQUALITY OF OPPORTUNITY

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Abstract

Amongst the various basic rights, the Right to Equality of Opportunity is the mainspring, as it encompasses in itself various other rights, such as, justice, liberty, rights, property etc. majority of the people in the world believe that the right to equality should be provided unconditionally to all individuals, as all men are created equal' i.e., all human beings have similar attributes. Almost all religious traditions maintain that all humans must be considered to be equal, as they are all God's children. Various thinkers and intellectuals have also surmised that all human beings are equal and hence deserve to enjoy the basic human rights, especially right to equality. The majority of theorists of the world share the same belief regarding human beings. According to them all human beings share the same characteristic and needs, hence entitling them to enjoy the right to equality.



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1. Introduction :

Our Constitution also guarantees Right to equality to all individuals and prohibits any kind of discrimination on the basis of class, caste, creed, race or sex. But this declaration is not enough to change the reality of the situation. The prevalence of discriminatory social norms for e.g. the status and disposition of a family surely becomes the determinant of an individual's position and status. Thus, generally, the privileges received by an individual are determined by the status of his or her family in the society. Therefore it would not be wrong to conclude that, as long as the family system exists, it is impossible to establish equality. This rationale goes on to explain the prevalence of equality in the majority of ancient societies where the family was the smallest and most important unit of society. For instance, inequality was highly prevalent in Classical Greece. According to Aristotle's description of ancient Greece, three social classes were present in Greece and there was a great imbalance in the treatment meted out between citizens and slaves as well as between men and women. Only citizens were entitled to participate in the state activities. Similarly, the ancient Hindu Society was divided into four castes, namely Brahmins, Kshatryas, Vaishyas and Shudras. The lowest caste faced extensive discrimination and were treated abominably. Similarly, the feudalism prevalent in the medieval European society had established inequality in the

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society to a great degree. The Church also played an important part in cementing the inequality in society and it was observed that the clergy dominated the society. Thus, legal privileges were prominently based upon status and birth. Inequalities were prevalent in majority of the societies of the world during the ancient and medieval ages.

In the pre-eighteenth century the majority of the societies all over the world believed that nature had made men and women unequal in every sense. Besides this the prevalence of inequalities was justified by the various societies and dominant people, on the basis of traditional values, superior race, age, sex culture, wealth, religion etc. In spite of the various efforts taken for the removal of inequality, it still exists in the contemporary world. It naturally exists in capitalist societies where there is a huge gap amongst various sections of the society on account of unequal distribution of wealth. But, surprisingly, it is also found to be prevalent in socialist societies, where many measures have been taken for redistribution of wealth and regulation of the economic market. In fact, human societies all over the world are riddled with social inequality on the basis of power, status, class or gender.

2. Why is equality desirable?

Equality as a political and moral ideal has influenced human society since time immemorial. Every religion and faith of the world advocates equality of human beings, as they consider them to be the creation God. Therefore they advocate equality without any discrimination on the basis of caste, color, sex, race, creed, religion etc. The doctrine of equality has been a great source of inspiration for several people. For instance on July 4, 1779 the American colonies made a declaration of their independence. It said, *"We hold these truths to be self-evident that all men are created equal, that they are endowed by their creator with certain inalienable rights, which among these are life, liberty and the pursuit of happiness"*. In the 1789 the National Assembly of France declared *"All human beings are born free and equal in dignity and rights."*

3. Similarly the Universal Declaration of Human Rights reiterates :

"Inequality is most visible in the every area of part of the world. No part of the World is entirely free from social and economic inequalities. Even rich countries a face the problem of economic inequality and extreme poverty."

So just like liberty, the doctrine of equality too has been a source of great inspiration for the people. Since the French Revolution, equality has served as one of the leading ideals of the body politic. In this respect, it is at present probably the most controversial of the great social

ideals. There is controversy concerning the precise notion of equality, the relation of justice and equality (the principles of equality), the material requirements and measure of the ideal of equality (equality of what?), the extension of equality (equality among whom?), and its status within a comprehensive (liberal) theory of justice (the value of equality).

The term "equality" can be defined as "parity", "equivalent", "fairness", "impartiality" or "egalitarianism".

However, when the word is used in relation to human beings it is not intended to connote that all people are identical or at par with each other. In a human rights milieu, "equality" means that we are all equal in one crucial manner: despite of our differences we all have innate value. We are all equally entitled to human rights simply because we are human, and the individuality that make us distinctive as well as diverse should not make us superior or inferior with regard to human rights. The rule of equality hence requires that every human being and the societies must value and accommodate human differences without any discrimination. Another word, which is complimentary to equality, is non-discrimination. It is not easy to think about "non-discrimination" without understanding the meaning of "discrimination" In simple words, discrimination means to "discriminate" to "differentiate" to "distinguish" or to "treat differently". Without the non-discriminative approach, you cannot have equality. So in other words we can say that occurrence of equality means failure of discrimination.

4. Human Nature and Inequality:

Human beings are most often disposed to discriminate between their fellow beings on the basis of social as well as economic factors which eventually promote inequalities. Several evidences and incidents have highlighted the adverse effects of inequality. It is the need of hour to get rid of these age-old inequalities which are harmful to all members of a society. To do so we need to assess the mechanism that would assist in this process. During the process we also need to analyse the main factors responsible for the human tendency of fostering inequality such as conscious or unconscious bias, social norms, prejudice, reason, emotion, free will etc. We must also study whether it is possible to alter these instincts. Besides this the role of the inner conscience and social instinct (such as altruism, empathy, language and cooperation) in the development of inequality, also need to be scrutinized. We should also analyse their role in eradicating inequality and establishing equality. The greatest challenge

of eradicating of inequality is in developing techniques for developing the positive conscience.

5. Inequality prevalent among human beings:

1. Natural inequality :

Natural inequality is the inequality faced since birth. It is mostly based on -physical characteristics such as colour, sex, height, weight, etc. Natural differences do not create much injustice in the society. Whereas the social, religious, gender or racial differentiation create a great rift in society. Thus, they should be shunned.

2. Social inequalities are socially created inequalities:

Social inequalities usually arise due to unequal distribution of wealth, power, prestige, status etc. in the society. These kind of social inequalities are usually ascribed and widely accepted by the society. For instance the concept of caste system and “*untouchability*” evolved during the ancient Indian society. This differentiation, known as the caste system was recognized as well as subscribed by the society. In addition to this, the various societies have also witnessed discrimination on the basis of natural differentiation. For instance, the apartheid system for several years, which was based on the belief of racial superiority of whites over blacks.

6. Causes of Rise in Inequalities :

According to the law of nature all human beings are not the same. There are marked differences amongst human beings which in turn has generated various social groups in the society who discriminate amongst themselves. This leads to the development of inequality in the society. However it has been observed that although some differences lead to the development of inequality, others do not. They linger on in the society as differences but people are in no way differentiated on that basis. For instance the caste system during the early Vedic period, was merely a difference as people could choose their occupation, according to which they were designated a class. But from the Later Vedic period the caste system became rigid, because people were designated castes according to their birth. They were soon immensely discriminated on this basis. This led to the development of inequality in the society.

In the contemporary world, social inequalities in society usually arise due to differences in gender, age, class, ethnicity structural factors, (such as geographical location, citizenship etc.) People are often discriminated on this basis with regard to access to a variety

of rights in the society, such as facilities available, political representation, participation etc. Various studies have revealed that socio-economic and political differences often lead to inequalities. For instance, high death rates and stress-related diseases often are a repercussion of unequal distribution of wealth in the sphere of income. Similarly, democratic institutions in a society may cease to work effectively due to deepening inequalities, which may lead to the development of social conflict as well as political instability and may in turn lead to the establishment of authoritarian regimes. It has been observed that the patterns of inequality have changed in the post cold-war era, [after-1991] as Eastern European countries have shifted from state controlled to market-based economies. Therefore the nature of social inequalities in the post-socialist regime has undergone a variety of significant changes. For example, although it has been relatively stable in the western-most countries, it rose significantly in many countries emerging from the former Soviet Union. These countries have ever since witnessed extreme poverty. This clearly indicates that inequality amongst various social groups has been developing in different ways across the world.

7. Inequalities prevalent in India:

Various surveys conducted from time to time have revealed the inequalities prevalent in India. For instance, the 2011 census discloses that —the literacy rate in the country was 74.04 percent, 82.14 for males and 65.46 for females. After more than 66 years of the adoption of the new constitution, the derived goal of social justice has not been achieved. The political participation of the backward classes and poor people is negligible. The representation of the Dalits (SC), STs in Central Government Class one Services is less than 15%. 5% class C or Class D services.

8. What is Equality?

a. quality is not sameness:

One of the misconceptions in our society is that of equating equality with sameness. This error has been used and continues to be used for extremely destructive and malicious behaviours, for example thinking that everyone is the same, believing the same thing, living the same life and consequently exterminating anyone who is in any way different. In fact equality was never meant to mean sameness and the use of the concept of equality to force sameness is a gross abuse of the concept of equality.

Equality means this: equal rights and equal opportunities. That is it. It doesn't mean that every one has to live the same life. It does not mean that everyone has to dress the same

way, think the same way, speak in the same tone of voice or believe the same errors. It doesn't mean that nobody can be distinct, or special, or eccentric, or different from people around them. To reiterate equality means: Equal rights, equal opportunities. In its original intent, the idea of equality was meant to assist freedom by leveling the field for people who come from rougher backgrounds. But the idea of equality have been misused to sabotage freedom. If everyone is forced to be the same and live the same way, then there is no freedom. And misuse of the idea of equality to mean sameness has been used just to destroy freedom in the communities in which this misuse of the idea of equality is being practiced. The same is the case for the idea of women's equality. Once again equality means: equal rights, equal opportunities, in this case between women and men. But many feminists have again misused the concept of equality to mean sameness. So they have been teaching women to act like the worst of men. In the process they have been training women to deny themselves the better qualities that are more natural to women than they are to men: qualities such as, tenderness, warmth, elegance and ability to produce as well as to nurture life. Instead, they have put women into a race to become the like men, denying them the right to qualities that are uniquely feminine or what is more natural to women than to men. In both cases, we see a vast misunderstanding of the concept. Equality does not mean sameness; equality means equal rights. Equal rights benefit freedom, fairness, and human advancement by creating a fair field for everyone. Coercion towards sameness destroys personal freedom by forcing everyone to be the same, even as it undermines human advancement by destroying what is at the root of human advancement: namely innovation. Innovative minds think differently from what is thought around them thereby bringing in progress. The error of confusing equality with sameness is saboterial to human society and undermines its best quality. And if a country is to live up to its promise of freedom, then this error must be confronted and overcome in every place that it exists.

b. The Accepted View of Equality:

Equality cannot be equated with uniformity. It is also not possible to establish absolute equality. Therefore equality means that —equals ought to be treated alike in the respect in which they are equal.

1. Formal Equality of Opportunity:

Formal equality of opportunity means that every individual should be provided equal opportunity for achieving higher positions and posts. In fact, higher positions and posts

should be concurred to deserving candidates on the basis of merit or fair competition. The realization of equality of opportunity will not be achieved in a particular environment only but can be achieved in various social environments. For instance, there is a greater possibility of achievement of equality of opportunity in a democratic environment. But even in an autocratic society, it can be fulfilled if the post of autocrat is open to all individuals without any discrimination and the selection is fair, based on merit. In addition to this, the rule of the autocrat may be based on equality of all individuals in the social, economic and political areas. Similarly, a communist society may also provide equality of opportunity, if the head of the communist regime is the best qualified for the post of party membership. Formal equality of opportunity can be established in a society which is free from guild restrictions and where there are no trade restrictions and open market policies. Similarly, it would also include equal opportunity to all individuals regarding higher positions and posts, on the basis of, merit or fair competition, in opposition to nepotism, where public offices are distributed to one's relatives and friends only.

Equality of opportunity can be concurred in a market economy only if the openings in business firms are publicized, so that any individual may apply for the job without any form of restriction or discrimination. In opposition to this Equality of opportunity is restricted in places where only current employees of a firm are eligible to apply to higher-level jobs. Similarly, equality of opportunity in a market setting means that loans would be provided to all individuals without any form of discrimination, on the basis of expected profit. It also requires that sale, purchase, sales of bonds, sales of shares and other economic activities, provide all firms and economic agents the same opportunities for gain. Moreover generally, equality of opportunity also requires that firms and individuals make transactions impartially for gain. In such a situation, participants in a market setting regard their competitors as potential partners for interaction.

Therefore, market agents select those business partners who would help them to achieve their goals via interaction. The ideal of formal equality of opportunity is associated with public life and not private life. But there is a very thin line of difference between them and many issues related to them have often drawn up controversies. For instance issues related to inviting someone for dinner, choosing a marriage partner, formulating alliances etc., do not fall within the sphere of equality of opportunity. Although these kinds of personal issues may involve injustice and may be morally designated as wrong, these aspects of an

individual's personal life cannot be included in equality of opportunity. Thus equality of opportunity influences the political, economic and civil aspects of a society but not every aspect of the lives of individuals. Equality of opportunity sometimes tends to be limited in scope, as it is implemented within the political boundaries of various nation states. Although in such cases equality of opportunity can be limited in scope, if required formal equality of opportunity could also be broadened in scope. Similarly although Equality of Opportunity regarding trade may be limited in scope, (as it is implemented within the political boundaries of various nation states) but its scope may be broadened by providing a global marketplace, in which all transactions conform to formal equality of opportunity applied world-wide.

2.Substantive Equality of Opportunity:

The most essential requirement for proper implementation of Equality of Opportunity is to provide a genuine opportunity to become qualified. For instance in the earlier days, it was the nobles who were given the top positions in bureaucracy. It was much later that they were chosen through competitive examinations. Thus Equality of Opportunity was created. To ensure the implementation provisions should be made for these competitive exams would be conducted all over the country, so all the bright educated persons are able to give these exams notwithstanding the fact that they are from villages or small towns or big cities. These kinds of provisions, along with the formal announcement of Equality of Opportunity would satisfy the complaints of all the sections of the society. It would lead to the development of a general feeling in the society that sufficient or good enough opportunities to become qualified were provided to all.

The development of equality of opportunity in this manner would greatly help in summing the good enough level of opportunity provisions. This could be deduced by comparing the costs and benefits of greater provision of opportunities, with the costs and benefits measured in terms of other conflicting values. The "good enough" level of provisions deduced, would actually give a description of those classes of the society, who do not enjoy equality of opportunity. For instance there could be a class of children, who in spite of being given the provision of scholarship, fail to enjoy equality of opportunity, because they are unable to compete with the wealthy children whose parents impart them private tuitions and training. Therefore, in such cases, the motive to achieve equality of opportunity is lost. In order to reduce the advantages that may be conferred to some wealthy individuals, several methods have been suggested. One such ideal suggested by *John Rawls* is popularly known as

"equality of fair opportunity". Equality of fair opportunity (EFO) is a condition in which individuals possessing similar inborn talent and similar aim will witness prospects of success in competitions. They would receive benefits and posts according to their capability and performance in the competition. For instance, there are two individuals Vibha and Rakesh, who possess similar inborn talent and similar aim, but one belongs to a wealthy as well as educated family whereas the other to a poor and uneducated family. In spite of this if they have the same prospects of achieving their ambition of becoming a scientist at NASA, then this condition can be designated as Equality of fair opportunity (EFO). (But it should be taken into account that the specification of EFO is quite different from the specification given by Rawl in 2001. In this Rawl has explained that socioeconomic status of an individual does not have much impact on one's competitive prospects. He also explains the broader ideal of EFO). Thus EFO has led to the development of the idea of a classless society. For instance, if in a society prominent positions and posts are passed on to other members of the social group from generation to generation, then such a society does not qualify the condition of EFO. Thus a society satisfies the condition of EFO if it is classless and no advantages are passed on generation by generation except genetic features and socialization that instils ambition. (Thus individuals gaining advantage by gifts and inheritance will be violating the ideal of EFO.) The concept of EFO completely eliminates the benefits (such as trainings, tuitions, better education, access to influential social network etc). In an EFO society, if certain individuals enjoy the benefits such as training and tuition to enhance their skill on account of wealthy parents, then the society will provide the same benefits (such as public education provisions) to children of non-wealthy parents. But on the other hand, an EFO society may have some parents, (wealthy or poor) who are strongly motivated to help their children in achieving certain aims. These concerned parents do not harm the society in any way and can by all means continue to help these children. Thus, a society fulfills the condition of being an EFO even if certain individuals are benefitted by the support of their parents, as long as their competitors with the same kind of talent and aim are also benefitted similarly by the society itself. A society could provide more resources for the education of children belonging to poor and uneducated parents, because they take it for granted that the wealthy and educated parents will do it automatically for their children. Thus the enormous state expenditures on less privileged children by the state would be counterbalanced. Thus policies of these kinds would greatly help in establishing EFO. Thus there is no other greater ideal in a society than

EFO, that needs to be achieved. This ideal is more precious than all the money in the world. Thus we should not keep waiting for reasonable and cost-effective measures for its realization as there is nothing as valuable as EFO. Although it is unconvincing to eliminate the word 'ambition' from the EFO formula, it is extremely essential to analyze the issue of differential ambition. Thus if any two individuals have the same ambition but one works hard to achieve it and the other does not, and then the ideal of EFO will not be applicable on them. For instance, two individuals, Molly and Simmi have the same ambition in life, i.e. to gain admission into I.I.T. Molly does not work as hard as Simmi, to achieve the ambition. Due to this Simmi qualifies the I.I.T Entrance examination but Molly does not. In such kind of cases the ideal of EFO will not be applicable. The concept of EFO enfolds the division of responsibility between individual and society. This ideal upholds the ambition of an individual without placing any social responsibility on them.

3.The Scope of Equality of Opportunity:

Another aspect needs to be analyzed to accomplish equality of opportunity. For the realization of equality of opportunity, one more aspect needs to be analyzed. For instance in the age of kings, there may have been a warrior society which must be fulfilling all the conditions of formal and substantive equality of opportunity, for recruitment to the warrior posts. In this society, only warriors were encouraged and rewarded. Thus, this warrior society cannot be designated as a society fulfilling equality of opportunity, as it does not provide any scope and opportunity for people having other talents and for those who want to pursue a career in other fields.(such as dancers, singers, story-tellers, teachers, rock musicians, artists etc.) This reveals that equality of opportunity can only be achieved when conditions of formal and substantive equality of opportunity are fulfilled for all kinds of human talents and careers. Thus a society that encourages develops and rewards a large variety of talents, is truly a society which fulfills equality of opportunity to the maximum. Thus, there are two views regarding the wide-scope of equality of opportunity. The first view believes that equality of opportunity can be realized only when all human talents are encouraged, developed, and rewarded. On the other hand, there are others who believe that the wide scope of equality of opportunity can in no way be outlined but the processes that restrict the scope of opportunity should be abolished by all possible means.

4. Equality of Opportunity and Meritocracy:

Formal and substantive equality of opportunity ideals only define the methods by which every individual can rise to important positions and posts of the society. But these ideals do not define the extent of inequality that would be acceptable in a society and would also benefit the society. Equality of opportunity would defeat its purpose if all social positions would be equally important and desirable. This issue has been addressed by the adoption of the term “*meritocracy*” for the fulfillment of Equality of Opportunity. The term “*meritocracy*” is often misinterpreted in term of fulfillment of the formal and substantive equality of opportunity ideals. But it actually refers to a broader ideal. Thus “*meritocracy*” actually refers to a society in which besides fulfilling the equality of opportunity, rewards and remuneration are received by those individuals who are capable and deserving. Thus according to it individuals should get what they deserve. Therefore, if this ideal is ignored, the less qualified and less capable may gain what more qualified or more capable candidates would deserve.

5. Justifications of Equality of Opportunity:

The Equality of Opportunity norms prohibit discrimination on the basis of caste, creed, race, ethnicity, religion, colour, sex, etc. But it must be taken into account that certain kinds of discrimination cannot be designated as unlawful. For instance, a black person may be more comfortable in making black friends. This cannot be considered to be wrong morally. Therefore this cannot be considered as discrimination. But on the other hand, if a firm is bent on employing only whites, this would tend to limit the employment opportunities of the blacks. Thus this kind of discrimination should be considered as unlawful and laws and social customs should be framed to prohibit this kind of discrimination. In order to fulfill formal and substantive equality of opportunity ideals, discrimination needs to be eradicated. These broader ideals should be valued morally and should be fulfilled unconditionally. They might also be justified on instrumental grounds. For instance the discrimination between men and women should be eradicated in order to fulfill equality of opportunity. Thus the ideals of equality of opportunity are not only desirable on the basis of morality but also for the establishment of effective governance. Therefore it should be considered and designated as a deontological requirement or as a valuable state of affairs which must be promoted.

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