

As contended by Dr B.R Ambedkar, equality should be considered as the premier and foremost principle for the development of the nation. When in question, democracy or justice should always be analysed in reference to the concept of equality which is mainly considered as a precursor which is beneficial to the development of the nation. In a democratic country like India, democracy can only develop when every individual is served with the sense of dignity towards equality and justice without any sort of discrimination on the basis of caste, religion, gender, race, origin etc. and when all the social and economic variations are eliminated in order to entitle the rights guaranteed by the constitution to every individual citizen of India as it is contended by Nelson Mandela, that, *“As long as poverty, injustice and gross inequality persist in the world, none of us can truly rest”*<sup>[1]</sup>.

The concept of equality includes providing the Right to Equality to each and every individual irrespective of their caste, religion, race, sex, gender, origin or any other ways of discrimination and every individual has equal right before the law. In spite of providing the Right to Equality to all the citizens of the nation, there are many regions where the practice of discrimination on the basis of caste, religion, origin, gender or race is still prevailing and this is why the makers of the constitution have provided the right to equality to each and every individual residing within the territory of India.

This Right to Equality is provided by the Constitution of India under Article 14 which is considered as major fundamental right includes providing the right of equality before law and equal protection of laws. As stated by art. 14 of the Constitution of India, *“The state shall not deny to any person equality before the equality or the equal protection of law within the territory of India”*<sup>[2]</sup>, this article of the constitution corroborates or guarantees that every individual citizen of India, within the territory, must be provided with the protection of right of equality including the equality before law and equal protection of laws.

This article will be dealing with analysing the scope of Right to equality, and its nature and extent of the concept of equality. This article will be also focusing on answering certain questions such as:

- From where did the concept of equality originated?
- How did the concept of equality evolve?

- Where does the concept of equality stands in the scope of international law?

The origin or the development of the concept of equality can be understood in different phases and some important points for the reference to the growth and development of the concept of equality such as the Greek philosophy, the Medieval period, the Renaissance, the Nineteenth Century, Contribution of the Liberals, the Twentieth Century and its contribution to the development of the concept of equality[3].

In the first phase of Greek Philosophy, there are two different traditions:

1. In the tradition where inequality which is supported by Plato and Aristotle, it was discovered by Aristotle that inequality was the cause of rebellion in many states and justice according to him is treating equals equally and unequal unequally. In fact, he also insisted on recognition and maintenance of the existing inequality in the society which can be between the masters and the slaves, between the rich and the poor or between the morally superior and morally inferior. Whereas, Plato classified men into man of gold, man of silver and man of iron.
2. In the tradition where equality which is supported by Pericle, Sophists, Antiphon and Stoics, the stoic philosophy was based on the idea of universal brotherhood and citizenship and also based on the ideology of natural and reasons and this corresponds to the modern idea of equality, meanwhile they opposed slavery and pleaded for natural equality among men.

So, this was the purpose of the Greek philosophy as far as the concept of development of equality is concerned.

Moving on to the second phase, i.e., the Medieval Period under which Christianity raised voice for equality but soon it got converted into equality before God. During this period, feudalism emerged in Europe and unequal rules of aristocracy developed, in fact, feudalism was considered as a combination of legal and military customs in the medieval Europe that flourished between the 9<sup>th</sup> and the 15<sup>th</sup> century as well as the concept of social inequality got legal recognition and legal privileges which were available to them and it occurs where resources

in the given society are distributed unevenly typically through norms of a location that endanger a specific pattern along the lines of socially defined categories .

Now, in the Renaissance phase, the concept of gender quality was highly influenced especially in terms of marriage wealth ownership and freedom of expression and the emerging middle class challenged the legal, social and political privilege of the feudal order as well as the glorious revolutions helped in emerging the cause of equality.

In the nineteenth century, here it saw a demand for socio-economic equality for the newly emerging working class. In fact, as a result of the industrial revolution, economic disparity has increased and the demand for economic equality and justice also increased. The industrial and economic development brought significant social changes. Thus, the movement for political equality also became stronger.

Moving on to the Liberals, they focussed on various kinds of equality such as moral equality which implied the rights each man to be treated as an end and not means and other is the judicial equality which implies the right of each men to justice on the same terms as other men, and here judicial equality basically stress upon the equality before the law also known as equality under the law, equality in the eyes of the law, legal equality under which each individual must be treated equally by the law and that all are the subject to the same law of justice, and the last kind of equality which is political equality under which guarantees right of each man to a vote that counts no more and no less than the vote of any other. Basically, by political equality we refer to the extent to which the citizens have and equal voice over the governmental decisions.

Now, the last phase of the origin or the development of the concept of equality, is the phase of twentieth century which witnessed many revolutionary struggles for national equality, for example, emergence of various national movements and the Indian nationalism varied specific feature was the first nationalist movement to emerge in the colonies by and by the early years of the nationalist movement the movement for national liberation had begun to emerge in other parts of Asia such as Indochina, Indonesia, Korea, the Philippines and Iran. In fact, under the 20<sup>th</sup> century, has seen the various movements of black power movement which emphasized the racial pride, economic empowerment

and the creation of political and cultural institutions for African-American people in US.

Art. 14 of the Indian Constitution is considered as one of the major fundamental right as it ensures and guarantees the equal protection of laws and equality before law to each and every citizen of India by eliminating all the socio-economic variations and inequalities as well as various practices of discrimination on the basis of caste, race, religion, gender, place of birth, etc., so as to provides for equality to all the citizens of the nation. This art. also plays crucial role in the Indian Constitution as it is a part of the golden triangle and effectively functions in conjunction with art. 19 and art. 21[4].

As stated under article 14, *“the state shall not deny to any person equality before law and equal protection of laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth”*[5]. Under art. 14 of the Constitution of India, the state is not empowered to contradict the right to equal protection of laws and equality before law of the citizens of the nation[6]. The article 14 ensures protection to each and every citizen of the nation to their right to equality without any sort of discrimination practices and is considered as the major expression of the principle of rule of law. There are two different expressions stated under article 14 that are stated and explained as follows:

#### 1. Equality before law

As stated by Prof. Dicey in reference to the concept of legal equality and equality before law, *“no man is above the law”* [7], which explains that the law established by the ordinary court of land must be applied to all the citizens of the nation[8] and every citizen is considered to be on equal stature, the state must establish those rules which provides equal treatment of law to all the citizens. It implies that no person is considered above the law and all individuals must be considered as equal in the eyes of law. The expression equality before law is a British concept and is considered as a negative connotation as it does not empower or denies the power of the government to not to practice any discrimination on the basis of caste, creed, gender, race, religion, place of birth, etc. The concept of equality before law in India is considered as a conservative approach as it includes a multiple number of socio-economic variations and implies that all the existing similarities and equalities must be prolonged and maintained in an effective and

efficient manner and therefore indicates absence of privileges to a particular community and each and every individual will be considered as uniform and equal in the eyes of law.

- Equal protection of laws

Dr B.R Ambedkar believed that before providing equality before law, there must equal protection of laws granted to all the citizens within the territory of the nation as the existence of stratified society will require equal protection of laws, then only equality of law will be ensured by granting equal protection of laws and equality will be maintained by granting equality before law i.e., first ensure then maintain equality. The term equal protection of laws means like should be treated alike and it empowers the parliament to perform positive discrimination or take any sort of affirmative action in order to maintain equality and then practice equality before law. Equal protection of laws is adopted from the 14<sup>th</sup> amendment US constitution and this concept is considered to be progressive in nature as it implies to eliminate the inequalities prevailing in the society and bind the accommodation of diversity.

The concept of equality is considered as one of the major concepts of principle of rule of law as it has wide scope and because of its comprehensive nature. And due to its comprehensive extent, the concept of equality extended its scope in the international law as well.

Under International law, equality has its own importance as it implies rule of non-discrimination and protects rights of the individuals by eliminating or prohibiting discriminatory practices. As is based on the ideology of guaranteeing particular human rights, it is considered as one of the major fundamental rights guaranteed to the citizens of a particular nation. In the international law, it implies the importance of equality with reference to four different domains which area as follows<sup>[9]</sup>:

1. Establishment of certain effective methods in order to prohibit discriminatory practices,
2. Classifying different discriminatory practices whether inclusive or exclusive or intention,
3. Fix a particular limit to justified and unjustified actions,

4. Maintaining the consistency for ensuring protection to specific measures relating to practice of non-discrimination.

Therefore, under international law, the concept of equality has its own importance and is derived from different domains in order to practice non-discriminatory practices and provide equal protection of laws and equality before law to every individual within the territory of that nation.

There are many landmark judgements in reference to the concept of equality. Some important judgments are as follows:

In the case of *State of West Bengal v. Anwar Ali Sarkar*<sup>[10]</sup>, Section 5(1) of the West Bengal Special Courts Act, 1850 was challenged implying that it violates article 14 of the Constitution of India as it has the purpose to provide speedier trial procedure for certain offences but section 5(1) of this act empowers the government decide which offences are to be referred so as to provide speedy trial under government's discretion. The court analysed the objective of the section and it was held that the objective mentioned under the statute is considered as vague and is uncertain in nature as the classification is in the discretion of government, hence it is violative of article 14.

One of the most landmark judgment in the case of *Maneka Gandhi v. UOI*<sup>[11]</sup>, as we know that passport of Maneka Gandhi was impounded without providing specific reasons and this action of the government was challenged in this case implying that it is against the provisions of article 14, 19 and 21 of the constitution of India. The court said that the core concept of article 14 of principle of equality is reasonableness and non-arbitrariness and when including any sort of action under article 21 of right of protection of life and liberty, it must fulfil the requirements of article 14 as well as of article 19 as all the three articles are interlinked with each other and it was held by the court that the action must fulfil the test of reasonableness of article 14 of the constitution and that procedure must be just, fair and of reasonable in nature and if not, it will not be considered as procedure at all under article 21 of the Constitution of India.

In the case of *Air India v. Nargesh Mirza*<sup>[12]</sup>, the judgement of this case is considered as one of the most important judgements relating to the concept of equality. In this case, regulation 46 and 47 of the Air India Employees Service Regulations were challenged implying that it

violates the provisions of article 14 of the Constitution of India as it states that female air hostesses must be granted retirement when attained the age of 35 years and will be terminated on the ground of pregnancy or married within first 4 years of service. Now, it was held by the court that only termination on the ground of pregnancy is violative of article 14 and must be struck down and the part of regulation 47 of this statute which is based on the discretion of managing director is considered to be excessive delegation of powers which must be eliminated.

In the case of *Mithu v. State of Punjab*<sup>[13]</sup>, section 303 of Indian Penal Code was challenged implying it to be of unconstitutional nature. According to section 303 of IPC, *Punishment for murder by life-convict.—Whoever, being under sentence of 1[imprisonment for life], commits murder, shall be punished with death.*<sup>[14]</sup>, which explains if any person sentenced under life imprisonment for committing murder must be provided mandatory death penalty and those who commits murder not under the sentence of life imprisonment, then death sentence is not mandatory. It was held by the court that this classification is not of rational sense and it violative of article 14 of the constitution of India.

Another landmark case relating to the concept of equality, of *Shayara Bano v. Union of India*<sup>[15]</sup> article 14 was declared as unconstitutional and the court held the muslim law practice of triple talaq of unconstitutional and arbitrary in nature against the principle of equality.

In the case of *Indian Young Lawyers Association v. State of Kerala*<sup>[16]</sup>, there was prohibition to the entry of females of age group of 10 to 50 into the temple and it was considered as violative of article 14 but, it was held by the court that the Rule 3(b) of the Kerala Hindu Place of Worship is unconstitutional in nature, at present many legal reviews still in process.

Next case is of *Navtej Singh Johar v. Union of India*<sup>[17]</sup>, in this case a part of section 377 of Indian penal code was decriminalised which is of the consensual sexual acts between homosexuals is considered as punishable under this section and was violative of article 14 of the Constitution of India. The court observed that this implies vague discrimination and must be eliminated as violative of art. 14. At present,

this is not at all applicable to any sort of sexual act between LGBTQ community when conducted with free consent.

Now, the concept of equality has been widely interpreted with new dimensions in the case of *E.P Royappa v. State of Tamil Nadu*<sup>[18]</sup> in which it was observed that concept of equality under article 14 cannot be limited or confined under the traditional limits rather it is considered as dynamic concept which is prevailing against arbitrariness as they are incompatible to one another and held that article 14 strikes out at arbitrariness in state action and ensures fairness and equality of treatment and if that action is of arbitrary nature, it is violative of article 14 of the constitution of India.

The concept of equality under article 14 of the Constitution of India is considered as significant principle as it implies and guarantees the Right to Equality with equality before law and equal protection of laws to all the citizens within the territory of India, without any discrimination on the basis of caste, religion, gender, race, sex, place of birth etc. It extends its scope to eliminate all sorts of discriminatory practices and socio-economic variations in order to ensure equality to every individual. Under article 14 of the Constitution of Indian, no one is considered to be above the law and everyone are considered as equal in the eyes of law. When the principle of equality is ensured and maintained in an effective an efficient manner, the principle of non-arbitrariness based on the ideology of reasonable classification and non-discrimination will prevail and every individual will be treated equally in the eyes of law.