

## Right to Equality: A Legal Framework under Indian Constitution\*

\*Dr. Pankaj Dwivedi, Associate Professor, Department of Law (ABVSL), Chhatrapati Shahu Ji Maharaj University, Kanpur, UP.

Right to equality is a basic human right that is recognized and protected by numerous international and national legal frameworks. It guarantees that every person is entitled to the same rights and protections under the law, without any discrimination based on factors such as their race, gender, religion, ethnicity, caste, or other characteristics. The principle of equality is a cornerstone of social justice, democracy, and the promotion and protection of human rights. It underpins the recognition of human dignity and is essential for the realization of other fundamental human rights, including the right to education, health, and freedom of expression. The principle of right to equality is enshrined in numerous international human rights treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social, and Cultural Rights. Many countries have also enshrined the right to equality in their national constitutions, legislation, and policies.

### RIGHT TO EQUALITY: A CONSTITUTIONAL MANDATE

The right to equality is a constitutional obligation that requires individuals to be treated without discrimination based on their religion, race, gender, caste, ethnicity, or any other status. It is a fundamental human right that is essential for the protection of other human rights and promotes social justice and democracy. This principle is recognized in various international and national legal instruments, including human rights treaties, constitutions, legislation, and policies. While progress has been made in eliminating discriminatory practices and policies, more work is needed to ensure that the right to equality is fully realized, especially for those who experience multiple forms of discrimination.

**Article 14: Right to Equality:** Article 14 states that "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India". Article 14 implies that the State must treat individuals who are in similar circumstances in the same manner. Additionally, this article suggests that individuals, regardless of whether they are Indian citizens or not, should be treated differently if the circumstances surrounding their situation are different.

**Article 15: Social equality and equal access to public areas:** According to Article 15 of the Indian Constitution, no discrimination shall be made against any citizen of India based on their religion, race, caste, sex, sexual orientation, gender identity, or place of birth. Every individual has equal rights to access public facilities such as parks, museums, wells, bathing ghats, etc. The provision permits the state to make special provisions for women and children and to take affirmative action to improve the status of socially and educationally disadvantaged classes or scheduled castes or tribes.

**Article- 16: Equality in matters of public employment:** According to Article 16 of the Constitution, it is prohibited for the State to discriminate against a citizen regarding employment. All citizens have the right to apply for government jobs, with a few exceptions. Parliament has the power to pass a law stating that only individuals from a specific area can fill certain positions. The State is also allowed to reserve positions for backward classes, scheduled castes, or scheduled tribes who are underrepresented in the State's services.

**Article- 17: Abolition of untouchability:** Article 17 of the Indian Constitution prohibits the practice of untouchability. The Untouchability Offences Act of 1955, which was later renamed the Protection of Civil Rights Act in 1976, outlines the penalties for engaging in this practice.

**Article 18: Article 18 of the constitution prohibits the State from conferring any titles.** According to the Indian Constitution, the State is not allowed to confer any titles except for academic or military distinctions. Additionally, citizens of India are prohibited from accepting titles from foreign states.

### DIMENSIONS OF RIGHT TO EQUALITY

#### Equality before the Law

The initial phrase in Article 14, "equality before law," has been adopted from the English common law. The concept of equality before law implies that every individual should receive equal treatment irrespective of their wealth, gender, or social status. The government cannot

grant any specific advantages to any person in the country. As per Dr. Jennings, the principle of equality before law suggests that the law should be the same for all individuals, and it should be enforced equally so that similar cases are treated equally<sup>1</sup>.

In **Srinivas Theatre v. state of T.N.**<sup>2</sup>, According to Justice Reddy, the principle of equality before law is a multifaceted concept. One of its aspects is that no individual or group, regardless of their status or position, should be exempted from state laws. The state is responsible for using legal means to establish a more equal society, as envisioned by the preamble and directive principles of state policy outlined in Part IV of the Indian Constitution.

### Equal protection of the Laws

The principle of "equal protection of the law," which is the second part of Article 14 of the Indian Constitution, draws its inspiration from the US Constitution. Unlike the "equality before law" concept, this principle reflects a positive notion of equality. The concept of equal protection of the law has been derived from the 14th Amendment, Section 1 of the US Constitution, and it suggests that individuals who are in comparable situations should be granted equal rights and responsibilities regardless of their social background. This principle implies that people who share similar relevant characteristics must be treated equally without any form of discrimination. Equals and unequals cannot be put in the same footing and be treated without discrimination. In **Stephen's college v. University of Delhi**<sup>3</sup>, The court has ruled that the phrase "Equal protection of the laws" must be interpreted as a positive obligation on the state to ensure that everyone receives equal protection under the law. This requires the state to make necessary social and economic changes so that all individuals can enjoy equal protection under the law without any discrimination.

### No class legislation but Reasonable classification

Article 14 of the Indian Constitution prohibits the use of classification in legislation, but there are some exceptions where the classification may be considered reasonable and thus permissible. The followings are laid down in the cases of **Budhan Chaudhary v. the State of Bihar**<sup>4</sup> and **Vajravellu Mudaliar v. Special Deputy Collector for Land Acquisition**<sup>5</sup> for class legislation to be considered reasonable or rational:

1. A classification cannot be random or unreasonable. It must have a rational or substantial basis for distinguishing between those who belong to the category and those who do not.
2. The classification must serve a rational objective that the legislation intends to accomplish. The classification can be based on various factors, such as location, age, or profession. The key is that the purpose of the legislation must align with the classification.

In the case of **State of West Bengal v. Anwar Ali Sarkar**<sup>6</sup> The courts have ruled that while Article 14 of the Indian Constitution prohibits discrimination, it does allow for reasonable classification. However, such classification must be based on intelligible differentia, and there should be a clear nexus between the classification and the objective sought to be achieved.

### No discrimination

The essence of right of equality is no discrimination by state. In **P. Rajendan v. state of Madras**<sup>7</sup>, The practice of allocating seats in state medical colleges based solely on the proportion of a district's population to the total population of the state can be considered discriminatory. This is because it could result in a highly qualified candidate from one district being rejected, while a less qualified candidate from another district is admitted, solely due to differences in population ratios.

### Access to Justice

Equality before the law ensures that everyone has the right to access justice, and no one should be denied this right. This includes the right to appear in court and should not be hindered by

<sup>1</sup> Hanamant Karanure, 'Article 14 - Equality Before Law and Equality protection of the law', Manu patra article June 2, 2022

<sup>2</sup> Equivalent citations: 1992 AIR 999, 1992 SCR (2) 164

<sup>3</sup> CASE NO.: Writ Petition (civil) 1868 of 1980, Supreme Court of India, DATE OF JUDGMENT: 06/12/1991

<sup>4</sup> 1955 AIR 191, 1955 SCR (1)1045

<sup>5</sup> 1965 AIR 1017, 1965 SCR (1) 614

<sup>6</sup> 1952 AIR 75, 1952 SCR 284

<sup>7</sup> 1968 AIR 1012, 1968 SCR (2) 786

economic status or lack of awareness. It is the responsibility of the government to play a crucial role in ensuring access to justice for all. In *Anita Kushwaha v. Pushap Sudan*<sup>8</sup>, The Supreme Court has established that the right to access justice is a crucial aspect of the right to life, which is guaranteed by Article 21 of the Constitution. Furthermore, access to justice is also a component of the right to equality before the law and equal protection of laws for all, including non-citizens, as provided by Article 14 of the Constitution. This right is not confined to executive action but also encompasses legal proceedings, courts, and tribunals where the law is enforced and justice is dispensed.

### **Protection against arbitrariness**

The principle of the right to equality prevents the state from taking any arbitrary actions. Article 14 specifically includes the principle of Equal Protection of Law, which aims to prevent any form of arbitrary behaviour by the state. This principle is opposed to the doctrine of arbitrariness. In *E.P. Royappa v. State of Tamil Nadu*<sup>9</sup> Supreme Court has “Equality is antithesis of arbitrariness. The equality and arbitrariness are sworn enemies and therefore where an act is arbitrary it is unequal both according to political logic and constitutional law and is therefore violating of Article 14.

According to the new concept of equality, if state action is arbitrary, it cannot be justified even on the basis of test of classification”. In *Maneka Gandhi v. Union of India*<sup>10</sup> Bhagawati J. said “Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principal of reasonableness which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence.”

In *D.S Nakara v. Union of India*<sup>11</sup>, In the aforementioned case, the Supreme Court of India deemed Rule 34 of the Central Services (Pension) Rules, 1972 unconstitutional. The Court held that the differentiation made by the rule between pensioners who retired before a particular date and those who retired after it lacked a rational basis, and was therefore arbitrary. This classification was found to be in violation of Article 14 of the Indian Constitution. In *E.V. Chinnaiah v. State of A.P.*,<sup>12</sup> The judiciary has held that legislation cannot be challenged on the grounds of violating Article 14 of the Indian Constitution if its intention is to implement Articles 15 and 16 or if the differentiation made by the legislation is reasonable and not arbitrary.

### **Doctrine of reasonableness**

Reasonableness of state action is of utmost importance for the right of equality. In *Preeti Srivastava (Dr) v. State of M.P.*<sup>13</sup>, The Supreme Court has ruled that policies and programs cannot be unreasonable or arbitrary, and they cannot be executed in a manner that undermines other important public interests or the greater good of society. Therefore, all public policies in this regard must be evaluated based on their reasonableness and their overall impact on the public good. In *Maneka Gandhi v. UOI*<sup>14</sup> The Supreme Court has stated that the fundamental concept of equality under Article 14 of the Constitution is based on reasonableness and non-arbitrariness. Therefore, any action taken must pass the test of reasonableness under Article 14, and the procedures involved must be just, fair, and reasonable in nature.’

In the case of *State of West Bengal v. Anwar Ali Sarkar*<sup>15</sup>, In this case, Section 5(1) of the West Bengal Special Courts Act, 1950 was challenged on the grounds that it violates Article 14 of the Constitution of India. This is because although the act aims to provide a speedier trial procedure for certain offenses, Section 5(1) gives the government the power to decide which offenses will be referred for speedy trial at its discretion. The court examined the objective of the section and found it to be vague and uncertain due to the classification being at the government's discretion, thus rendering it violative of Article 14.

### **The Doctrine of legitimate expectation**

<sup>8</sup> AIR 2016 SC 3506 at p.3519

<sup>9</sup> AIR 1974 SC 555

<sup>10</sup> AIR 1978 SC 597

<sup>11</sup> 1983 AIR 130, 1983 SCR (2) 165

<sup>12</sup> (2005) 1 SCC 394

<sup>13</sup> (1999) 7 SCC 120

<sup>14</sup> Supra 19

<sup>15</sup> Supra 15

The administration has a moral duty to create laws that ensure equality for all individuals within a jurisdiction. This includes providing individuals with the right to judicial review in administrative law in order to safeguard their interests in instances where public authorities have failed to do so. Article 14 serves as a means of connecting the legitimate expectations of individuals with any actions taken by authorities. In *Dr. Preeti Srivastava v. State of M.P.*<sup>16</sup>, It has been observed that since any policy that benefits backward classes makes a departure from the norm of equality, it must be designed and implemented in a way that promotes the ultimate goal of building a non-discriminatory and egalitarian society. This is the final constitutional justification for such policies.

### **Golden triangle of Equality**

Article 14, 19 and 21 are together called golden triangle. In *Minerva Mills Ltd. v. Union of India*<sup>17</sup>, Chandrachud, C.J., as he then was, observed: "Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Articles 14, 19 and 21." In *Bachan Singh v. State of Punjab*<sup>18</sup>, The Supreme Court has emphasized the importance of three fundamental rights in the Constitution: Articles 14, 19, and 21. These rights are crucial in upholding the concept of the rule of law. They have been referred to as a "golden triangle" by Chief Justice Chandrachud in the *Minerva Mills* case. Justice Hansaria has also noted the significance of these rights in *T.R. Kothandaraman v. T.N. Water Supply & Drainage Board*<sup>19</sup>, that, "*The golden triangle of our Constitution is composed of Articles 14, 19 and 21. Incorporation of such a trinity in our paramount parchment is for the purpose of paving such a path for the people of India which may see them close to the trinity of liberty, equality and fraternity.*"

### **RIGHT TO EQUALITY AND RULE OF LAW**

The expression rule of law which originated from the French phrase '*la principe de legalite*' actually means the principle of legality. The concept of the rule of law was initially introduced by Sir Edward Coke, and it was later expanded by A.V. Dicey in his book "The Constitution of England." Dicey identified three principles that make up the concept of the rule of law, which are:

1. The absence of arbitrary power and the supremacy of the law: This principle means that no one, including the government, is above the law, and the law applies equally to everyone.
2. Equality before the law: This principle states that all individuals, regardless of their social or economic status, are subject to the same laws and will be treated equally by the legal system.
3. The constitution is the result of the ordinary law of the land: This principle means that the constitution is not a separate entity that exists outside of the law, but instead is a product of the same legal processes and procedures that apply to all other laws

This concept can also be found in Article 7 of the Universal Declaration of Human Rights, of which India was a signatory. This provision states that "*All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination*".

The rule of law forms the basis of the Indian Constitution. The Indian Constitution is regarded as supreme and no one can go against it. In *Yusuf Khan v. Manohar Joshi*<sup>20</sup>, the Supreme Court ruled that it is the state's responsibility to defend and protect the law and the constitution and that it cannot sanction any act of violence that undermines the rule of law.

### **RIGHT OF EQUALITY: A MYTH**

"Real equality is immensely difficult to achieve, it needs continual revision and monitoring of distributions. And it does not provide buffers between members, so they are continually colliding or frustrating each other." - Mary Douglas<sup>21</sup>

<sup>16</sup> Supra 22,

<sup>17</sup> (1980) 3 SCC 625

<sup>18</sup> (1982) 3 SCC 24

<sup>19</sup> (1994) 6 SCC 282

<sup>20</sup> AIR 1999 SCW 4768

<sup>21</sup> [https://www.brainyquote.com/quotes/mary\\_douglas\\_237134](https://www.brainyquote.com/quotes/mary_douglas_237134) last visited 5.3.2023

Article 14 of the Indian Constitution guarantees equality before the law and prohibits discrimination based on religion, race, caste, sex, or place of birth within India's territory. Despite this, there are concerns that the wealthy can manipulate the legal system due to their financial power. These concerns suggest that Article 14 may only apply to the middle or lower classes, and not to the rich and powerful.

Recent events, such as the Aryan Khan drug case, have brought this issue to the forefront. Some have argued that Aryan Khan, who comes from a wealthy and influential family, was treated with preferential treatment while in custody, and that this is indicative of how the legal system may operate differently for the rich and powerful.

Overall, while Article 14 of the Indian Constitution aims to ensure equality before the law, there are concerns that the wealthy may still receive preferential treatment. These concerns raise important questions about the effectiveness of the legal system in upholding principles of fairness and justice for all individuals, regardless of their financial status or social standing..

Presently medical professional is witnessing severe discrimination from state as well from judiciary. Municipal Licence fee notices are being sent to medical professionals only. Sparing

### **Professional discrimination by state and judiciary**

other professionals like advocate, Chartered accountants from such notices reflects apparent professional discrimination from state. Similarly only medical profession has been put under the purview of Consumer Protection Act that too by Supreme Court in **VP Shantha v. IMA**<sup>22</sup> but inclusion of Lawyers in CPA was suspended by Supreme Court in **Bar of Indian Lawyers v. D.K.Gandhi**<sup>23</sup> in 2009 and this stay is still applicable while NCDRC has put them under purview of CPA in **D.K.Gandhi v. M. Mathias**<sup>24</sup>.

### **Discrimination by way of Arbitrariness**

Supreme Court in **Parmanand Katara v. union of India**<sup>25</sup> has held Right to health as fundamental right under Article 21 and apart of state, medical professionals have been made liable for fulfilment of this fundamental right which is apparently in contradiction to definition of state in article 12. No other professional has been made liable for any fundamental right till date. Inclusion of non-state bodies or person in definition of state is apparent arbitrariness.

Similarly in CPA 2019, Central Government has made tremendous change in old CPA 1986 which are detrimental to the interest of service provider. Precondition of deposition of fifty percent awarded compensation for appeal and provision of filing the litigation from place of residence and work place of plaintiff is against the fundamental Right of Equality and Equal Protection of law provided in Article 14 of constitution as no defendant in Indian Judicial System is forced to face such discrimination. In CPA 2019 appointment of judges and members has been removed from act itself and subjected to be done by Central Government unlike CPA 1986 in which appointment procedure of judges and members was part of act. In **Registrar of Co-operative Societies v. K. Kunjabmu**<sup>26</sup> Supreme Court has said that Excessive delegation may amount to abdication and delegation unlimited may invite despotism uninhabited. Independence of the judiciary at all levels including quasi-judicial bodies is part of the Basic Structure of the Constitution of India (**Shri Kumar Padma Prasad v. Union of India**<sup>27</sup> and **Union of India v. Prathiba Bannerjee**<sup>28</sup> and by changing appointment method of judges and taking full control on it is not only arbitrary but unreasonable act.

### **Violation of rule of law**

Rule of law one of the essential components of right to equality has been violated repeatedly by the state and Indian judiciary has raised objections to it. In **P. Sambamurthy v. State of Andhra Pradesh**<sup>29</sup>, the Supreme Court found unconstitutional a clause allowing the administration to interfere with tribunal justice, describing it as “violative of the rule of law, which is a fundamental and vital aspect of the Constitution.” In **Dr. D.C. Wadhwa & Ors v.**

<sup>22</sup> 1996 AIR 550, 1995 SCC (6) 651, JT 1995 (8) 119, 1995 SCALE (6)273

<sup>23</sup> (MANU/SC/0950/2009)

<sup>24</sup> (2009) 2CompLJ468 (NCDRC)

<sup>25</sup> 1989 AIR 2039, 1989 SCR (3) 997

<sup>26</sup> AIR 1980 SC 350

<sup>27</sup> 1992 (2) SCC 428

<sup>28</sup> 1995 (6) SCC 765)

<sup>29</sup> 1987 AIR 663, 1987 SCR (1) 879

*State Of Bihar & Ors*<sup>30</sup>, the Supreme Court has once again invoked the Rule of Law to criticize a State Government's overuse of its authority to enact ordinances instead of legislation passed by the Legislature.

In *A.D.M. Jabalpur v. S. Shukla*<sup>31</sup>, Justice Khanna emphasized that the rule of law is the sole solution to prevent arbitrary conduct during legal proceedings and the misuse of governmental authority. In order to uphold the rule of law, it is imperative to maintain a balance between the welfare of society and individual interests, while also guaranteeing the independence of the court.

### **Inequality by the way of reservation system**

“From the equality of rights springs identity of our highest interests; you cannot subvert your neighbour's rights without striking a dangerous blow at your own.” – Carl Shurz<sup>32</sup>

The reservation is an attempt to promote equality among citizens by ensuring equal and fair opportunities to all. In the case of *Andhra Pradesh v. Nalla Raja Reddy*<sup>33</sup>, The notion that equality can be breached not only by treating equals differently but also by treating unequals the same has been well-established. However, there is now a growing belief that reservation policies are hindering the realization of the right to equality. At the time of Independence, reservations were introduced to promote development and equality, but they have now resulted in further dividing the society on caste lines, which was not the intended objective. Reservations have now become a political tool to garner votes in India, and governments are exceeding the limits set by the judiciary. There is also no systematic review of the reservation system to evaluate the upliftment status of the community that has benefitted from it through reservation policies. In *M.R. Balaji v. State of Mysore*<sup>34</sup>, The court ruled that the government's policy of reserving 68% of college admissions was deemed excessive and unreasonable, and it was subsequently capped at 50%. In 1992, the Supreme Court of India had held that reservations could not surpass 50 percent, as anything above this limit would violate the constitutional guarantee of proportional access. However, there are state laws that exceed this 50 percent limit, and they are currently under scrutiny in the Supreme Court. For instance, in the State of Tamil Nadu, the rank-based reservation policy remains at 69 percent and is applicable to around 87 percent of the population.

Regarding the case mentioned, the court's ruling stated that if a caste is classified as backward, it will remain so indefinitely. However, it is expected that the government will periodically review the criteria for classification and remove any caste or class from the list of backward classes if they have made enough progress and no longer require reservation benefits.. In *Indra Sawhney v. Union of India*<sup>35</sup>, The Supreme Court has made an observation that the policy of reservation should be reviewed year by year and cannot be implemented indefinitely. This means that the state must evaluate the eligibility of socially and educationally backward classes on an annual basis. However, it is unfortunate that the state has not yet conducted such a review. The purpose of reservation is to overcome caste differences rather than maintain them. Therefore, reservation should be used in a limited manner; otherwise, it may lead to the perpetuation of casteism in the country. In *M. Nagaraj v. Union of India*<sup>36</sup>, The Supreme Court has held that socially, educationally, and economically advanced individuals from the Scheduled Castes/Scheduled Tribes communities should not be eligible for reservation benefits in government services. This is to ensure that the most vulnerable members of the community receive the quota benefits, rather than individuals who are already at the topmost layer. However, despite this ruling, no measures have been taken to implement this exclusion. In *Ashok Kumar Thakur v. Union of India*<sup>37</sup>, Justice Ravindran has expressed concern over the current trend of reservation, stating that if more people aspire to be backward rather than forward, it can lead to stagnation in the country.

<sup>30</sup> 1987 AIR 579, 1987 SCR (1) 798

<sup>31</sup> AIR 1976 SC 1207

<sup>32</sup> <https://www.wonderfulquote.com/l/equality-quotes> last visited on 5.4.2023

<sup>33</sup> 1967 AIR 1458, 1967 SCR (3) 28

<sup>34</sup> 1963 AIR 649, 1962 SCR Supl. (1) 439

<sup>35</sup> AIR 1993 SC 477, 1992 Supp

<sup>36</sup> [AIR 2007 SC 71]

<sup>37</sup> (1960 (2) SCR 375)

Moreover, there is a concern that once reservation is implemented, it may never be withdrawn, even if there is evidence of upliftment of backward classes, due to political considerations. This has been observed in Tamil Nadu, where forward castes were only able to secure 3% of total seats (and 9% in open competition) in professional institutions at the undergraduate level, despite comprising 13% of the population. This indicates that the reservation system may not always result in a fair distribution of opportunities, and may have unintended consequences for certain groups.<sup>38</sup> Some people view the implementation of reservations as a case of reverse discrimination. Proponents of reservations often cite the Mandal Commission report to support their argument. According to the report, 52% of Indians belong to the Other Backward Classes (OBC) category, while the National Sample Survey of 1999-2000 shows that the figure is only 36% (32% if Muslim OBCs are excluded).<sup>39</sup>

“Two wrongs don’t make a right.” The implementation of caste-based reservations as affirmative actions has begun to present a significant challenge to the idea of meritocracy. The concept of providing special privileges to socially backward classes was established without proper analysis of its outcomes, often for political gain.

Justice JB Pardiwala, in his judgement on the historic EWS reservation, emphasized that reservation should not continue indefinitely and become a vested interest. This highlights the need for a thoughtful evaluation of reservation policies to ensure that they do not hinder meritocracy or create a perpetual system of privilege.<sup>40</sup>

### **Gender discrimination**

Gender discrimination is not apparent in routine social life but it is very much visible in state actions and inactions. *Air India v. Nargesh Mirza*<sup>41</sup> the case, it was a clear-cut example of gender discrimination by the state. The challenge was against Regulation 46 and 47 of the Air India Employees Service Regulations, which stated that female air hostesses must be retired when they reach the age of 35 years and will be terminated from service if they become pregnant or get married within the first 4 years of their service. The challenge was made on the grounds that this violated Article 14 of the Constitution of India, which guarantees equality before the law. The court held that only termination on the grounds of pregnancy was violative of Article 14.

Despite legal victories, gender bias statistics remain concerning and highlight the need for further progress in ensuring equality for women in India. For instance, according to the National Crime Records Bureau, in 2011, there were over 228,650 reported incidents of crimes against women, while in 2021, there were 4,28,278 reported incidents, indicating an 87% increase.<sup>42</sup>

### **Social Inequality**

According to pre-pandemic data, India has the highest number of poor people in the world, with 228.9 million people living in poverty. Nigeria follows with 97 million people. Additionally, 34.4 million people in India lack access to basic necessities such as cooking fuel, housing, sanitation, and nutrition.

Recent data from 2019/2021 shows that about 16.4% of India's population is poor, of which 4.2% live in extreme poverty with a deprivation score of more than 50%. Furthermore, India is the only country in South Asia where poverty is significantly higher among female-headed households, with 19.7% living in poverty, compared to 15.9% in male-headed households.<sup>43</sup>

Additionally, according to the Credit Suisse Global Wealth Report in 2018, only 10% of Indians own 77.4% of the country's wealth, which is more than three-fourths of the total wealth of the Indian economy. In contrast, the bottom 60% of the population, i.e. the majority, only own 4.7% of the wealth. Importantly, the report also reveals that only 1% of the population

<sup>38</sup> Reservation Policy, (Major Issues for G.S. Advance Batch : 2015), VISION IAS, available at [www.visionias.in](http://www.visionias.in) last visited on 5.4.2023

<sup>39</sup> 36% population is OBC, not 52%, Business Standard, available at [https://www.business-standard.com/article/economy-policy/36-population-is-obc-not-52-106050801060\\_1.html](https://www.business-standard.com/article/economy-policy/36-population-is-obc-not-52-106050801060_1.html) last visited on 5.4.2023

<sup>40</sup> <https://www.livelaaw.in/top-stories/reservation-casteless-classless-society-supreme-court-majority-judges-in-ews-quota-case-213462> last visited on 5.4.2023

<sup>41</sup> 1981 AIR 1829, 1982 SCR (1) 438

<sup>42</sup> National Crime Records Bureau 2021 report, available at [https://ncrb.gov.in/sites/default/files/CII-2021/CII\\_2021Volume%201.pdf](https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf)

<sup>43</sup> *Unpacking deprivation bundles to reduce multidimensional poverty* report, GLOBAL MULTIDIMENSIONAL POVERTY INDEX 2022 available at <https://hdr.undp.org/system/files/documents/hdp-document/2022mpireportenpdf.pdf>

owns 51.5% of the wealth, meaning that half of the country's wealth is concentrated in the hands of just 1% of the population in India<sup>44</sup>.

Article 147 of the Indian Constitution explicitly provides for equal protection under the law, while Article 148 mandates that such equal treatment should be given to people who are equally situated. However, despite these constitutional provisions, social equality remains a distant dream in India.

In a country where 90% of the population has to live or make a livelihood with less than three-fourths of the country's resources, it is challenging to imagine that these people would have equal opportunities to earn a living. The unequal distribution of resources and wealth creates a significant barrier to achieving true social equality, which is still elusive for many in India. Observation of constitutional bench in the *Basheshar Nath v. CIT*<sup>45</sup> “*The statement that “when the rights conferred are put on a high pedestal and are given the status of fundamental rights...they are absolutely inviolable save as expressly enacted in the Constitution and cannot be waived by a citizen” makes it clear that fundamental rights cannot be waived.*

*Therefore, rights such as the right to livelihood and dignity under Article 21, the right to equality under Articles 14, 15, and 16, and the right to profession, occupation, trade, and business under Article 19(1)(g) cannot be assumed to be waived by the people. Economic disparity in the country is causing a violation of these fundamental rights, and it is the responsibility of the government to limit the disparity or provide more resources to those who are deprived.*

*The concentration of resources among the top 10% of the population in the country further exacerbates the problem, and the government must take concrete steps to address this issue and ensure that all citizens have equal access to resources and opportunities, as guaranteed by the Constitution. In *Samantha v. State of Andhra Pradesh*<sup>46</sup> the Supreme Court has stated while defining socialism “Establishment of the Egalitarian social Order through the rule of law is the basic structure of the constitution*

### **Inequality in opportunity**

In India, significant inequality in opportunity still exists among its citizens. According to the Periodic Labour Force Survey for the years 2017-18, 2018-19, and 2019-20, the top 10% of earners make almost as much as the bottom 64%. Additionally, the top 10% account for one-third of the total incomes earned in the country.

This inequality of income and opportunity has a significant impact on the lives of people, particularly those from disadvantaged backgrounds. It is crucial for the government to address this issue and ensure that all citizens have equal access to opportunities and resources to improve their standard of living. Without such measures, the divide between the rich and poor will continue to grow, leading to social unrest and further exacerbating the economic inequality in the country.<sup>47</sup> In *State Of Kerala & Anr v. N. M. Thomas & Ors*<sup>48</sup>, It has been held that the government has an affirmative duty to eliminate inequalities and provide opportunities for the exercise of human rights. While the fundamental rights enshrined in Part III of the Constitution are essentially negative in character, the government bears the responsibility to remove inequality and ensure equal opportunities for all citizens to pursue their occupations and professions.

It is the government's duty to ensure that everyone has access to equal opportunities for jobs and can flourish in their chosen professions. This includes taking measures to address economic inequality, providing quality education and training, and creating a conducive environment for business and entrepreneurship. By fulfilling this responsibility, the government can promote social justice and ensure that all citizens can lead dignified lives with equal opportunities for growth and success.

### **Gender Bias at Workplaces**

The highest gender diversity in the air force where men are 7 times more than women and, in the army, men are 27 times more than women But now in the historic judgment *The Secretary*,

<sup>44</sup> <https://www.livemint.com/Money/H2aBEUDpG06hM78dSSEJ/Richest-10-of-Indians-own-over-34th-of-wealth-in-India.html> last visited 5.4.2023

<sup>45</sup> AIR 2018 SC 357

<sup>46</sup> 1997 Supp(2) SCR 305 With C.A. 4603 of 1997

<sup>47</sup> The state of inequality in India, the economic times, available at [https://economictimes.indiatimes.com/news/economy/indicators/the-state-of-inequality-in-india/articleshow/91666341.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cpt](https://economictimes.indiatimes.com/news/economy/indicators/the-state-of-inequality-in-india/articleshow/91666341.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cpt)

<sup>48</sup> 1976 AIR 490, 1976 SCR (1) 906

**Ministry of Defence v. Babita Puniya & Ors**<sup>49</sup>. Supreme Court has held that women shall be eligible to get command posts equal to that of the male officers.

The landmark case of **Vishaka & Ors. v. State of Rajasthan & Ors**<sup>50</sup> The case in question deals with the issue of gender equality in the workplace, specifically whether sexual harassment is a violation of women's fundamental rights guaranteed by the Indian Constitution. The court ruled that sexual harassment does indeed violate women's right to equality under Article 14 and their right to life and dignity under Article 21 of the Constitution. The court then issued the Vishaka Guidelines, which established a framework for preventing and addressing sexual harassment in the workplace.

The right to equality is a fundamental right enshrined in most constitutions and is considered one of the basic human rights. It ensures that all individuals are treated equally before the law and have equal access to opportunities and resources without discrimination based on their race, gender, religion, caste, or any other factor. The concept of equality has evolved over time, and today, it encompasses not only formal equality but also substantive equality, which aims to eliminate structural inequalities and promote equal outcomes. This requires affirmative action and other measures to address historical injustices and promote diversity and inclusivity. The right to equality is a cornerstone of democracy and social justice, and its realization is essential for the development of a just and equitable society. However, achieving equality requires collective efforts from all stakeholders, including individuals, civil society, and the government.



<sup>49</sup> Civil Appeal No. 1210 of 2020, supreme court of India Date of Decision: February 17<sup>th</sup>, 2020

<sup>50</sup> (1997) 6 SCC 24