



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

WWW.WHITEBLACKLEGAL.CO.IN

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Editor-in-chief of White Black Legal – The Law Journal. The Editorial Team of White Black Legal holds the copyright to all articles contributed to this publication. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of White Black Legal. Though all efforts are made to ensure the accuracy and correctness of the information published, White Black Legal shall not be responsible for any errors caused due to oversight or otherwise.

WHITE BLACK
LEGAL

EDITORIAL **TEAM**

Raju Narayana Swamy (IAS) Indian Administrative Service **officer**



Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala . He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru

and a professional diploma in Public Procurement from the World Bank.

Dr. R. K. Upadhyay

Dr. R. K. Upadhyay is Registrar, University of Kota (Raj.), Dr Upadhyay obtained LLB , LLM degrees from Banaras Hindu University & Phd from university of Kota.He has succesfully completed UGC sponsored M.R.P for the work in the ares of the various prisoners reforms in the state of the Rajasthan.



Senior Editor

Dr. Neha Mishra



Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St. Louis, 2015.

Ms. Sumiti Ahuja

Ms. Sumiti Ahuja, Assistant Professor, Faculty of Law, University of Delhi,

Ms. Sumiti Ahuja completed her LL.M. from the Indian Law Institute with specialization in Criminal Law and Corporate Law, and has over nine years of teaching experience. She has done her LL.B. from the Faculty of Law, University of Delhi. She is currently pursuing Ph.D. in the area of Forensics and Law. Prior to joining the teaching profession, she has worked as Research Assistant for projects funded by different agencies of Govt. of India. She has developed various audio-video teaching modules under UGC e-PG Pathshala programme in the area of Criminology, under the aegis of an MHRD Project. Her areas of interest are Criminal Law, Law of Evidence, Interpretation of Statutes, and Clinical Legal Education.



Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttarakhand University, Dehradun' and LLM from Indian Law Institute, New Delhi.



Dr. Rinu Saraswat

Associate Professor at School of Law, Apex University, Jaipur, M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda

BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

STRIKING THE BALANCE: - A CRITICAL ANALYSIS OF EQUITY'S EQUALITY IN LAW AND SOCIETY

AUTHORED BY - ASHIMA SHARMA

ABSTRACT

“The study has examined the inextricable interplay between equality and equity in India's legal and social structures. It starts with a cardinal premise: while equal protection before the law is enshrined in the Constitution of India for all citizens, the situation on the ground is much more complex. Historical factors such as the deep-rooted caste system, entrenched patriarchal social norms, and innumerable forms of social exclusion have caused persistent inequalities. Henceforth, the notion of equity in opposition to this historical disadvantage has acquired profound importance. Equity understands that when establishing fairness, it may not be sufficient to treat everyone the same; rather, in certain situations it may require positive action and policies that support those who have been historically disadvantaged. The present research further unfolds the ways in which these concepts of equality and equity have been embedded in the Constitution of India, especially with respect to Fundamental Rights and Directive Principles, and how these were seen and interpreted by the Indian judiciary. The study has quite an elaborate discussion of the reservation policies, which is a very important aspect of affirmative action in India. It has provided an analysis of the debates and contention surrounding these, especially with respect to merit, efficiency, and the manner in which to make sure that the benefactors are by and large the most-grievance.

The inequalities in the stark realities of the Indian criminal justice system are further examined here, and the focus is on how such inequalities affect marginalized communities disproportionately at the level of arrests, detention, and sentencing. Gender-based violence and discrimination remain glaring and continuing flaws, and the text also unpacks some of these issues despite the existing legal frameworks for the protection of women's rights. In conclusion, the document argues that achieving real equality and equity in India will require multifaceted measures. It requires strong legal mechanisms and policies, a radical change in attitude at the social level, and a sustained commitment to the dismantling of structural barriers that continue to perpetuate discrimination and disadvantage.”

INTRODUCTION

Defining Equality and Equity within the Indian Socio-Legal Framework In the Indian socio-legal context, equality and equity often become interchangeable terms. Equality, in a basic sense, means the treatment under the law is uniform, which lends to the explicit guarantee of Article 14 of the Constitution of India.

Article 14 reads, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." Such a declaration embodies formal equality, which states that every individual has the same legal rights and one protection under the law, irrespective of his or her background. However, noble as it might sound in theory, this idea proves insufficient to tackle the staggering social and economic inequities that have become entrenched in Indian society. iIndia's history of caste oppression, patriarchal structures, religious marginalization, and regional imbalances means that just legal parity does not translate into boulevard equality in real life: A member of a historically privileged community and one belonging to a historically oppressed group may pop into the same court of law to institute a suit, but when it comes to opportunities or resources, they are not at all in equal stead.ii Here, therefore, comes the role of equity as a precondition. Equity sees justice in outcomes and fairness instead of just in treatment. Therefore, it acknowledges the fact that unequal in standing, individuals and communities may require some differentiated support and policies to be able to access the same playing field. The Indian Constitution has embedded that nuanced understanding by providing for positive discrimination or affirmative action. Articles 15(4), 15(5), and 16(4) empower the State to make special provisions for the advancement of socially and educationally backward classes as well as Scheduled Castes and Scheduled Tribes.iii The command of the Constitution is not in contradiction to the principle of equality but enriches it in its striving toward substantive equality—equality in results, not merely from the point of view of opportunities. The idea is that until some of these historical injustices and systematic disadvantages are recognized and rolled back with targeted interventions, the promise of equality will continue to elude a sizable portion of the population.

The judiciary has amply contributed towards the growth and comprehension of equity as an embodiment of the Indian law system. Cases like *Indra Sawhney v. Union of India* (1992) which declared between-rules legitimacy of reservations in public employment for Other Backward Classes (OBCs), indeed greatly highlighted the Indian Supreme Court's

acknowledgment of equity as an instrument for obtaining real equality. Likewise, in *Ashoka Kumar Thakur v. Union of India* (2008), the Court considered valid the state's intentions as regards providing reservations in educational institutions as testimony to rectifying structural inequities. These judgments tend to indicate an evolving jurisprudence that understands equality, not in an abstract cast-in-stone manner but in a situationally relevant and transformative sense. This goes with the greater constitutional objective of making the society just and inclusive.

The discourse on equality and equity in India is significantly rooted in overall philosophy as well as in socio-political visions put forth at the founding of the country by sages such as Dr. B.R. Ambedkar, the prime mover behind the constitution of this land.

As a result, he always talked in Favor of social justice and abolishment of the castes. According to him, pure democracy can never survive without some kind of substantive equality; so, he argued in Favor of equity and equal measure in the functioning of laws and policies. His vision was not to attract legal formalism but a complete reordering of social structures perpetuating inequality.^{vi} On the other hand, Gandhi emphasized Sarvodaya (welfare of all) and the upliftment of the weakest, which evoked the need for context-sensitive justice again. These philosophical foundations continue to emotionally drive contemporary debate on the most efficient ways of rendering equality and equity operational in a diverse and stratified society. Despite the legal and ideological basis, the realization of equality and equity remains a serious challenge in India. Reservations in education and employment, which prevent equity from being realized, are contested-wide on grounds of meritocracy and efficiency. Thus, critics argue that affiliation with merit is lost by such provisioning. Supporters argue that merit cannot be judged fairly without recognition of disadvantageous systemic measures.

Thus, this challenge lies in operating along this line without dilution of the constitutional promise to justice for all. Finally, these policies that offer equity are supposed to be oiled by solid institutional arrangements, the presence of political will continuously, and mass support, which are insufficient at times.

STATEMENT OF THE PROBLEM

The problem primarily is that although constitutional and legal frameworks exist to ensure

equality and equity, India has socio- economic-political inequalities which run too deep in the culture. Such inequalities have their sources in historical injustices: caste systems, patriarchal structures, religious marginalization, and regional imbalances. Well-intentioned law and policy usually do not lead up to confrontation of these complexities that breed a gap between formal equality and substantive equity.

LITERATURE REVIEW

In India, the quest for equality and equity is a complex narrative woven from ancient social structures, colonial legacies, and the aspirations of a newly independent nation. The literature review would cover the historical and philosophical underpinnings of equality and equity in India, drawing from the works of key figures like Dr. B.R. Ambedkar and Mahatma Gandhi, and analysing the evolution of these concepts in Indian law and policy.

HYPOTHESIS

While India's legal and constitutional framework provides a robust foundation for equality and equity, the practical realization of these principles is hindered by entrenched socio-economic disparities, institutional weaknesses, and implementation gaps. Achieving substantive equality necessitates not only legal and policy interventions but also comprehensive social transformation and institutional strengthening.

METHODOLOGY

This study adopts a multi-pronged methodology, integrating legal analysis, historical inquiry, and socio-economic assessment to comprehensively examine the concepts of equality and equity in the Indian context. The key components of the methodology include:

1. **Legal and Constitutional Analysis:** A detailed examination of relevant provisions of the Indian Constitution, including but not limited to Articles 14, 15, 16, and 17, will be undertaken. This includes an analysis of fundamental rights, directive principles of state policy, and landmark judicial pronouncements that have shaped the interpretation and implementation of equality and equity in India.
2. **Historical Survey:** The evolution of the ideas of equality and equity will be traced from ancient India through the colonial period to post-independence India. Particular attention will be paid to the role of social reform movements, such as

those led by Jyotirao Phule, B.R. Ambedkar, and others, in influencing public discourse and policy on social justice.

3. **Socio-Economic Analysis:** The study will examine data and reports relating to key socio-economic indicators such as education, employment, income levels, and access to resources.

This will help assess the current status of equality and equity across different social groups, especially marginalized communities.

4. **Policy Evaluation:** Critical assessment of policy measures such as reservations, affirmative action, and welfare schemes will be conducted. These policies will be analyzed for their objectives, implementation, and outcomes, particularly in terms of their impact on historically disadvantaged groups.

Through this integrated approach, the study seeks to provide a nuanced understanding of how equality and equity have been conceptualized, implemented, and experienced in India.

CONCLUSION

The study, therefore, emphasizes that in India the journey towards true equality and equity should actually be seen as a social, economic and political challenge embedded in centuries of hierarchical stratification, and an equally weighted constitutional concern. The Constitution of India has engraved upon itself an elaborate framework of Fundamental Rights and Directive Principles as its bedrock; both formal and substantive equality must be promoted thereunder. However, with caste discrimination, gender inequality, religious marginalization, and economic disparity appearing as black spots on the landscape, with the intervention of a biased legal-administrative mechanism, the dissonance between constitutional goals and social realities becomes glaringly apparent. Whereas many a time affirmative action has been construed to include admissions and reservations for betterment of access to educational and employment opportunities for these disadvantaged groups, the policies themselves have been challenged in courts regarding their reasonableness and effectiveness.

Judicial institutions in India have at various times provided a liberal and expansive reading to the concepts of equality and equity, but a lopsided implementation remains in contrast, especially in the case of the criminal justice system, where in the poor and disadvantaged land disproportionate burdens such as arrest, detention, and denying fairly heard trials. The

patriarchal order, institutional inertia, and poor enforcement of progressive laws have continued to impede effective gender equality. It is, thus, necessary to work toward social reforms aimed at changing attitudes, uprooting discriminatory structures, and developing institutional capacities to bridge the gaps that exist in achieving gender equality through law and policy intervention. Educational reform therefore must stress a curriculum that is inclusive with a critical pedagogy, one that nurtures sympathies and equality while legal aid is restructured towards empowering the vulnerable effectively.

Reservation policies ought to be refined by more differentiated, databased, and intersectional approaches that embrace many levels of disadvantage. Police and judicial reforms should go hand in hand with gender sensitization, public accountability mechanisms, and models of restorative justice to humanize the justice process. Moreover, political representation and economic empowerment opportunities for all communities that are marginalized, particularly for women and minorities, must be actively sought. Ultimately, the realization of equity and equality in India expects not mere laws on paper but rather an active infusion of national conscience strongly rooted in justice and compassion to dismantle structural inequities and further build a more inclusive society for all of us.



WHITE BLACK
LEGAL.