

**LEXKHOJ RESEARCH JOURNAL  
OF LAW AND SOCIO-ECONOMIC  
ISSUES**

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**(VOL I ISSUE I)**

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## **EDITORIAL NOTE**

LEXKHOJ is delighted to announce its first edition of the *Lexkhoz Research Journal of Law and Socio-Economic Issues* which is a peer reviewed international journal, publishing critical approaches to socio-legal study and multi-disciplinary analysis of issues related to law and socio-economic. The journal will strive to combine academic excellence with professional relevance and a practical focus by publishing wide varieties of research papers, insightful reviews, essays and articles by students, established scholars and professionals as well as by both domestic and international authors. Authors should confirm that the manuscript has not been, and will not be, submitted elsewhere at the same time.

The Journal provides a forum for in-depth analysis of problems of legal, social, economic, cultural and environmental transformation taking place in the country and world-wide. It welcomes articles with rigorous reasoning, supported by proper documentation. The Journal would particularly encourage inter-disciplinary articles that are accessible to a wider group of Social activist, economist, Researcher, policy makers, Professionals and students.

This quarterly issue of the journal would like to encourage and welcome more and more writers to get their work published. The papers will be selected by our editorial board that would rely upon the vibrant skills and knowledge immersed in the paper.

*Needless to say, any papers that you wish to submit, either individually or collaboratively, are much appreciated and will make a substantial contribution to the early development and success of the journal. Best wishes and thank you in advance for your contribution to the Lexkhoz Research Journal of Law and Socio-Economic Issues.*

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**RIGHT TO EQUALITY VIS-À-VIS RIGHT OF UNDERPRIVILEGED**

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**ABSTRACT**

*We citizens have a common right which is available to all irrespective of caste, creed, sex, religion, place of birth etc. and is called Fundamental Rights and is recognised as fair and legal. Fundamental Rights are Right to Rem in nature and is mentioned in Part III of the Constitution of India which is also called “Corner Stone” or “Magna Carta” of the Indian Constitution. The Concept of Fundamental Rights has been borrowed from the US Constitution. Fundamental Rights have paramount importance in the Constitution of India as it declares all laws void and unconstitutional, violating this. State shall not make any law which abridge or take away any of the rights as mentioned in Part III of the Constitution, however there are some exceptions. The main objective of the Fundamental Rights is to guarantee every citizen a civil freedom to allow them to live in peace and harmony. The Constitutional remedies make the fundamental Rights active, alive and functional. These rights create a positive environment for a social and political life. We should take a note that some fundamental rights are even given to non-citizens of India in the territory of India.*

## INTRODUCTION

Fundamental Rights are classified into six parts and is mentioned from Article 12 to Article 35 in the Constitution of India. These fundamental rights include Right to Equality (Art.14-18), Right to Freedom (Art. 19-22), Right against Exploitation (Art. 23-24), Right to Freedom of Religion (Art. 25-28), Cultural and Education Rights (Art. 29 -30), Right to Constitutional Remedies(Art. 32-35). Initially Right to property (Art. 31) was also a Fundamental Right but it was removed by the 44<sup>th</sup> Constitution Amendment Act, 1978 and is made a legal right under Article 300-A of the Constitution of India.

Fundamental Rights are called *Negative Rights* and is usually against the state which is defined in Article 12 of the Indian Constitution. While some of the rights can also be against any private individuals such as Art. 15 (2), Article 17, Article 18(3-4), Article 23 and Article 24, but one cannot knock the door of Supreme Court under Article 32 if any individual violates his/her fundamental right, it can only be access against State. However, they can approach State High Court under article 226 on violation of their legal right. Fundamental Rights are not absolute rights and parliament could put reasonable restriction. The grounds for the restriction may be advancement of SCs, STs, OBCs, women and children; general public order; decency, morality, sovereignty & integrity of India; security of state, friendly relations with foreign states etc.

Equality is about ensuring that individuals are treated equally and no less favourably than other individuals for a broad range of different reasons. Reasons for such discrimination may be gender, nationality, age, disability, civil status, family status, sexual orientation or religion. Equality means equal opportunity to all, while they cannot be absolute in nature. Equality can be of various types such as Natural Equality, Legal Equality, Social Equality, Political Equality, Economic Equality etc. Every human being desire few things that there must not be any special status to anyone based on caste or economy, everyone's basic needs should be fulfilled and everyone should get equal opportunity for development. These elements define equality.

Equality cannot be granted without these elements.

Every human being wants to be successful and develop in their own and without any barriers and for this to be affirming there must be a “Right to Equality”. Right to Equality is the first fundamental right which is guaranteed by the Indian Constitution. *Right to Equality* means equality before law, ruling out any prejudice on the basis of nationality, religion, caste, creed, gender or place of birth. This right also means an equality of opportunity with respect to employment, abolition of untouchability and also abolition of titles. Right to equality varies from Art. 14 to 18 but generally in other constitutions only the right conferred in Article 14 constitutes Right to equality. The concept of Right to equality is an important concern which is mentioned in different UN human rights instruments, such as Article 2 & 26 of ICCPR, Article 2(2) of ICESCR, Article 2 of CMW and Article 5 of CRPD.

Article 14 of the Indian Constitution states that, *the State shall not deny to any person equality before the law or the equal protection of law within the territory of India*. It applies to all persons and is not limited to citizens of India. Here the concept of two phrases i.e. ‘equality before law’ and ‘equal protection before law’ does not denote the same meaning. The former’s concept is negative, that no one should be given special privilege before the law whatsoever his position is while the latter is positive in content. The phrase “equal protection of law” is borrowed from the 14<sup>th</sup> Amendment of US Constitution which means that equal treatment in equal circumstances while different treatment in different situation. These two phrases have been simultaneously used in Article 7, Universal Declaration of Human Rights, 1948 which may influenced the formation of Article 14 of the Indian Constitution. In *State of West Bengal v. Anwar Ali Sarka<sup>1</sup>r*, Patanjali Sastri CJ observed that was a corollary of the first. The word ‘law’ in the former expression is used in a generic sense whereas the word ‘laws’ in the latter expression denotes specific laws.

Article 15 of Indian Constitution directs that *the state shall not discriminate against a citizen on grounds of religion, race, caste, sex or place, birth or any of them. It also prohibits*

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<sup>1</sup> AIR 1952 SC 75

*discrimination by the state and the citizens with regard to access to shops, hotels, public entertainment, wells, roads etc.*

This article applies to only citizen of India. This article was in limelight by the time the constitution was laid down as some of the laws such as reservations or Section 497 of IPC is the violation of this act but in cases like *Yusuf Abdul Aziz v. State of Bombay*<sup>2</sup>, The High Court declined any action against Section 497 as it did not discriminate only on the ground of sex, the exemption in favour of women was based on other reasons also such as early marriage and existence of poly marriage.

*Article 16 gives equal opportunity to all in public employment. No citizen shall be discriminated against or be ineligible for any employment under the state on grounds of religion, race, caste, sex, place of birth, descent or residence.*

Article 16 is another instance of the application of the general rule of equality before law laid down in Article 14 and for the prohibition of discrimination in Article 15(1) with respect to the opportunity for employment or appointment of any office under the state. Every citizen has equal right to apply for a particular government job. However, certain exceptional jobs are there for which only candidates residing in a particular place, certain caste or religion can apply while these laws have to be passed by the parliament.

Article 17 *provides for abolition of Untouchability*. Untouchability is considered to be an offence. An act was established Untouchability (Offences) Act, 1955 under which punishments is awarded for any offence related to Untouchability, however it is considered to be very few and inadequate.

Article 18 *State has abolished all the titles to create equality among citizens. Military and Academic distinctions are exempted from the provision for they are an incentive to further efforts for the perfection of the military power of the State.*

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<sup>2</sup> AIR 1954 SC 321

Dr. B. R. Ambedkar explained in the Constituent Assembly that Article 18 did not create a justiciable right: “The non-acceptance of titles is a condition of continued citizenship. It is not a right, it is a duty imposed upon the individual that if he continues to be the citizen of this country, then he must abide by certain conditions. One of the conditions is that he must not accept a title. If he did, it would be open for Parliament to decide by law what should be done to persons who violate the provisions of this Article. One of the penalties may be that he may lose the right of citizenship.” Article 18 not only prohibits Indian citizens to carry titles in the territory of India but any part of the world without the consent of the President.

When we talk about underprivileged, one image that comes in our mind is people having less money, education or having less advantage/opportunities than most of the people. One’s who were deprived of their fundamental rights are known to be Underprivileged. When we talk about Right to equality, majority of us is enjoying their rights with full comfortability, but if we take a look at our society or surroundings we will find that even after 68 years of Independence, 2 out of 10 peoples are deprived of their fundamental rights and they don’t even have the capability to go to Supreme Court or High Court for restitution of their rights. So, here a question mark on our constitution and judicial system that when an educated person is deprived of his/her right, he has enough knowledge to tackle this by going through Supreme Court or High Court but the percent of this type of persons are very less but what about the poor, illiterate peoples whose fundamental rights are violated on daily basis, but neither he / she has the knowledge of restitution process nor he / she can afford it. Here, the Government either the State or the Central has a duty to ensure whether the underprivileged are enjoying their rights either general or fundamental. Under, the Indian Constitution from Article 36 to 51 Directive Principles of State Policy are mentioned which directs the State to ensure rights of the peoples. Although it is not justiciable, but politically it matters a lot.

When we talk about Right of Underprivileged, Reservation system comes in our mind. Reservation is given to Under Privileged groups who were been suffering the practices like untouchability, no equality etc. from centuries before and after the independence. Reservation

system is an affirmative action where a percent of seat/quota is given to Underprivileged communities in Public sector or educational Institutions. When the Indian Constitution was being drafted, some groups were listed as Scheduled Caste and Schedule Tribes bases on their situation in past times. The basic theory behind giving reservation to these groups was because since from past they were deprived of their rights and there was least number of representations in social or political life from these communities. The initial stage as on 1950 was 15% to government aided educational institution and 7.5 % to government job and will be reviewed after 10 years. The Supreme Court in *M R Balaji v Mysore*<sup>3</sup> put a cap on reservation system that State cannot exceed the reservation by 50%.

The present scenario is quite different if compared to initial stage of reservation system. Now, it has become a political agenda to revive the reservation system without doing any practical revision of the situation. Now a day's many competent groups are enjoying this system because once their ancestors were deprived of their life which doesn't make a sense now. But even now reservation system is a boon to many under privileged who really want to grow in their own. This reservation system is a debatable topic ever since it was enacted. Many thinkers call it as a violation of Right to Equality. It was argued that since Constitution gives us a right to equality and State cannot discriminate on the basis of caste and gender, thus Reservation system is violation of one's fundamental right. But the Indian Constitution gives State such power to make any special provision for the advancement of any socially and educationally backward classes under Article 15(4) and 16(4) of the Indian Constitution. However, these two articles also had many debates as some peoples who comes under the reservation quota claim this to be their fundamental rights but Supreme Court in their various judgement like *C.A. Rajendran v. Union of India*<sup>4</sup>, *M. R. Balaji v. State of Mysore*<sup>5</sup> stated that these two articles do not guarantee a fundamental right to reservation and are merely enabling provisions. So, if we combine all these arguments and judgments, we will come to a conclusion that merely giving some quota of seats doesn't infringe someone's right to equality as these underprivileged

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<sup>3</sup> AIR 1963 SC 649

<sup>4</sup> AIR 1963 SC 649

<sup>5</sup> AIR 1968 SC 507

totally deserves it or we can say it in another way that it a compensation of the ruin that these underprivileged has suffer till date.

Underprivileged children are not most heartbroken part of our developing country. Children don't even have adequate food to live in. They don't even know about their rights while even these rights exist or not. If we go through the data of under privileged children, we will found that almost 1 out of 10 children are disabling, only 38% of India's children below the age of 2 years are immunized, 74% of India's children below the age of 3 months are anaemic. More than one in three women in India and over 60% of children in India are anaemic, Acute respiratory infections are leading causes of child mortality (30%) followed by diarrhoea (20%) in India, One in every 100 children in India between age group of 0-14 years suffers from acute respiratory infection according to the reports of a NGO, AGWO.

So, the questions arises does these children really need Right to equality or they need complete justice. Complete justice can only be given if State provides advance stage for these children. While there are many acts like Right to Education, Child Labour (Prohibition and Regulation) Act, 1986 which are merely on papers but are not seen practically. So, if we now compare Right to equality to Right of underprivileged, we will come to a conclusion that Right of Underprivileged should always prevail over Right to equality since complete justice can only be done then.