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*Title: Right To Equality: A Fundamental Pillar of Just Society,*  
*Authored By: Dheeraj Gupta & Co-Authored By: Prof. Ambar Srivastava,*  
*Uttaranchal University Law College, Dehradun,*  
*Email Id(s): [dheerajgupta15264@gmail.com](mailto:dheerajgupta15264@gmail.com), [ambarsri76@gmail.com](mailto:ambarsri76@gmail.com),*



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*Email ID(s): [lawjournal@lawaudience.com](mailto:lawjournal@lawaudience.com),  
[info@lawaudience.com](mailto:info@lawaudience.com) or [lawaudience@gmail.com](mailto:lawaudience@gmail.com).*

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### **ABSTRACT:**

*This article explores the pivotal role of the right to equality as a cornerstone in the foundation of a just society. It delves into the historical evolution and significance of this fundamental right, emphasizing its universal applicability and its embodiment in various international human rights frameworks. The article also examines the multifaceted dimensions of equality, encompassing not only legal and political spheres but also economic and social domains. Drawing on real-world examples, it highlights the positive impact of upholding the right to equality on fostering social cohesion, economic development, and individual well-being. Furthermore, the article addresses contemporary challenges and explores potential avenues for strengthening the implementation of the right to equality globally. In essence, it asserts that a commitment to ensuring equal rights for all is indispensable for the creation and sustenance of a just and harmonious society.*

### **INTRODUCTION:**

<sup>i</sup>The nation of equality is usually capable of two- fold application. First it can be used as a moral ideal. We seek equality amongst ourselves because we think it is just and proper. Not that all men are actually alike but we think it is just to treat them as such. Secondly, the nation of equality is often related to the nation of sameness, the idea of being alike. The concept of equality is based on the nation of both diversity and identity whereas equality as justice promote authentic, whereas equality as justice promote authentic diversity as part of its programme to grant equal opportunity to all but proscribes privileged differentiation equality as sameness strictly speaking stands for uniformity and abhors every diversity. On the operation level therefore be aware of the import of the word while using the form equality because undue insistence on the nation of equality as sameness may lead to its very negation and it will also be descriptive of the nation of justice and fairness the concept of equality as justice. The twins' ideas of equality as justice and equality as sameness have different connotation through ordinarily one shades into the other. The idea of



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equality as justice first found clear expression in the writing of Aristotle. He firmly believed that equal things should be treated equally and unequal things differently. Yet behind every such argument of equality as justice works the idea of identical treatment of the same measure and proportion for all when we say to each his due, we mean that each should have a fair share and a fair share means that unless there is justification for acting otherwise share should be approximately the same. The idea of equality as same as was clearly illustrated by Hegel when he wrote equality is the abstract identity of understanding which means in plain language that the levelling and unifying connotation of equality reflects the very pattern of logical thinking. There is nothing necessary primitive or in genuous in thinking of equality as identity. Rather this nation is another instance of the power of reason of its ability to reduce the heterogenous to the homogenous. Apart from the fact that the idea of same as even the scientific thinking of social problem is prone to perceive the sameness of equality in the field of social science proceeds like natural science by reducing the different to the identical.

Professor Ronald Dworkin has developed the thesis that everyone has the two equal respect and concern but does not have any claim to equality of treatment. This requires some thought to be given before approving of such a phenomenon or condemning the same. Rules contained in the constitution are merely rules of law and they do not give guarantee against existing societal inequalities. The right to equality is deemed to be purely procedural in such a situation.<sup>ii</sup> It is procedural in that, in contrast to other rights, it does not specify a normative or acceptable course of conduct. One may file a complaint against the violation of his right to equality if, rather than receiving subpar treatment, they received worse treatment than they did from someone else. The right to equality is considered to be only procedural in nature. It is procedural in the sense that unlike other rights it does not prescribe any standard or normal of behaviour. One can complain of

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the infringement of his right to equality not because the treatment meted out to him has been poor but because it was worse than what was meted out to someone else.

### **HISTORICAL BACKGROUND:**

Dr. B R Ambedkar started his movement in 1920. He stated we shall see better days soon and our progress will be greatly accelerated if male education is persuaded side by side with female education. Dr. Babasaheb spent his life for the betterment of women even involved in bad practices and professional like prostitutions. The greatest example of it was seen in Kamathipura. There was a person named David who was the mediator working in a brothel. He left his profession persuaded by the thought and teaching of Dr. Babasaheb Ambedkar. He evoked the entire prostitute to give up their profession and lead the Life of honour. In the Manusmriti, Manu not only expresses disdain for women but also treats them as inferior beings who lack intelligence, deprives them of the ability to own property and receive an education, and prohibits them from making sacrifices. Being India's first law minister and chairman of drafting committee of the constituent Assembly Dr. Ambedkar believed it was right and even his duty to change the Hindu social norms that Manu had established in order to release women from the long-standing oppression. As a result, he took the initiative to write the Hindu Code Bill and present it to the Constituent Assembly. Dr. Ambedkar tried an adequate inclusion of women right in the political vocabulary and constitution of India.<sup>iii</sup> More than sixty years ago the struggle against discrimination in India was given huge impetus when an emerging parliament was empowerment to remove obstacles to inclusion of group in matter of political representation education and public employment. Drawing extensively from many western constitutions and their legal tradition the Indian constitution one of the longest written documents was put into effect on 26 January 1950. It defined the fundamental political principle of the new government that upheld equality as a moral postulate. Part III of the Indian Constitution which enumerated fundamental right, classified them under the following article 13

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secured supremacy of the constitution in regard to fundamental right, article 14 – 16 together enshrined the principles of equality and removal of discrimination article 17, while declaring the abolition of untouchability, in effect acknowledged the evil of caste- based discrimination in society and the article 18 abolished all kinds of titles. At the time of independence, social equality, and non- discrimination were core principle guiding the development of a democratic nation state in India. Equality was more than a mere statement of principle since it not only spelled out the removal of princely and feudal privilege, but it provided a nexus between principles of anti-discrimination justice.<sup>iv</sup> However, a separate set of theories and commitments to group justice in India justified the proposed protection against discrimination as a way to make up for enormous conditional inequalities and achieve meaningful equality of opportunity for all.

### **LEGAL FOUNDATION:**

1. **Universal Declaration of Human Right (UDHR):** Protecting the rights of everyone, everywhere the Universal Declaration of Human Rights serves as a global road map for freedom and equality. For the first time, nations come to an agreement on the liberties and rights that should be safeguarded universally to allow every person to live freely, equally and the dignity. One December 10, 1948, the newly formed United Nations enacted the UDHR in reaction to the barbarous acts which...outraged the conscience of mankind that occurred during World War II. Following its ratification human rights were acknowledge as the cornerstone of liberty, Justice and harmony. A drafting group made up of official from a number of countries including the USA, China and Lebanon started work on the UDHR in 1946.<sup>v</sup> Subsequently, members of the Australian, Chilean, French, Soviet, and British drafting committees were added. By bringing a wider range of theological, political, and cultural backgrounds to the table, this enhanced the document's significance. Following discussions including all members



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of the United Nations Commission on Human Rights, the UDHR was ultimately accepted by the General Assembly in 1948.

2. ***International Covenant on Civil and Political Rights (ICCPR)***: One December 16, 1966 the United Nation General Assembly enacted the International Covenant Civil and Political Rights. As a result of the 35<sup>th</sup> state party ratification and accession, it came into effect on March 23, 1976. The Human Right Committee (HRC) which is tasked with overseeing the convention, was founded by the covenant and held its inaugural meeting in 1977. The protection of civil and political rights is guaranteed by the covenant. A fair trial, freedom of thought, conscience, religion, expression and association, equality before law, freedom from torture and slavery, the right to life, the right to be free from arbitrary arrest or detention, the right to political participation, and the freedom from arbitrary detention are among the rights that are upheld. The covenant has two optional protocols. The Human Right Committee is authorized to receive and consider communication from individual subject to its jurisdiction who claim to be victim of a violation by that state party of any of the rights set forth in the covenant according to a state party that has ratified the first optional protocol. State parties that accede to the second of optional protocol pledge to abolish the death penalty.

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### **PRINCIPLE OF EQUALITY:**

1. ***Equality of Opportunity***: The Equality of opportunity is laid down in the preamble as one of the objectives to be achieved. The right to equality of opportunity in the matter of public employment for citizens of India has been provided under Article 16 of the constitution. This article, which is more detailed than Article 15, is an example of how the general rule of equality before the law, as established in Article 14, is applied. Clause (1) of Article 16 provided equality of opportunity in matter relating to employment or appointment to any office under the state i.e; in matter of recruitment, promotion, wages, termination of employment, periodic

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increment, leave, gravity, pension, age of superannuation, etc. But the equality envisaged under Article 16 is equality amongst equally placed person. Article 16(2) provides that no citizen shall be discriminated against or to be ineligible for any employment of office under the state on ground only of religion race caste sex decent place of birth or residence. Thus Article 16 confers on every citizen a right to equal opportunity in matter relating to employment or appointment to any office under the state, irrespective of religion, caste, race, sex, etc. In an effort to equalize women and men, the constitution expressly forbids discrimination based on a person's sex. No post can be excluded solely based on a person's sexual orientation. There is no entitlement to fair job opportunities under Article 16(1). As a result, it does not prohibit selection tests or the establishment of requirements for office, including those related to mental and physical fitness.<sup>vii</sup>

2. **Non-Discrimination**: In addition to their mutual interaction the principle of equality and non-discrimination are inherently interconnected, interdependent, and indivisible with all other human rights. For instance, if a state introduced legislation restricting the ability of those with impairments to work this would clear case of discrimination and a breach of equality in addition to being a violation of the right to work. Indeed, if equality or the absence of discrimination are violated it is impossible to claim that any human right has been fully exercised. Because of this some would argue that in addition to having access to certain rights, people with disabilities must also fully enjoy their human right through the application of the principle of equality and non- discrimination. For instance, if educational services are not offered it is insufficient to state that individual with disabilities shall not face discrimination in exercising their right to an education. In a similar vein just because the state offers educational programs does not imply that people with disability will not experience discrimination when utilizing them. Therefore, in order for individual with disabilities to properly enjoy their human

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right in a way that is inclusive and respectful human dignity. State must address both equality and non-discrimination access to human rights.

3. ***Gender Equality:*** Ensuring each person's dignity should be the goal of any civilized community. Without equality of status and opportunity, dignity is impossible. The absence of equal opportunities in any walk of social life, a denial of equal status and equal participation in the affairs of society and therefore, of its equal membership. The dignity of the individual is dented and in direct proportion to his deprivation of equal access to social means. The democratic foundation is missing when equal opportunity to grow, govern and give one's best to the society is denied to sizable section of the society.
4. ***Equal Protection of Law:*** No one shall be denied the right to equality before law or the equal protection of the law on Indian territory, according to Article 14 of the Indian Constitution. Any individual on Indian territory, whether or not they are a citizen, may arrest this privilege. The term equality before the law and equal protection of law are included in Article 14 here. The English common law serves as the source of the first phrase 1 equality before the law. The United States of America Constitution is where the where the phrase equal protection of the law originates. According to section 4 of the American Constitution, no state may deny any individual equal protection under the law within its jurisdiction. Equality before the law within its jurisdiction. Equality before the law, in Dr. Jennings opinion, simply means that everyone must be treated equally when it comes to the application and enforcement of the law. All subject of majority and maturity age must have the same right to sue and be sued for the same action without distinction based on race, religion, caste, social standing, income, influence, or any other factor. Article 14 uses the term equality of the law to ensure similar treatment rather than identical treatment. It simply means that no subject is given a unique benefit because of their class, place of birth, or any other such reason. It also means that everyone will have the same right and obligation under comparable conditions. It basically indicates that there should

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be no discrimination among equals and that they should be treated equally. It is impossible to treat equals and unequal equally without prejudice.<sup>viii</sup>

### **EQUALITY PROVISION:**

Right to equality, guaranteed in the Indian Constitution is covered by its article 14 to 18. Article 14 commands the state not to deny to any person equality before the law or the equal protection of the law. Article 15 forbids the state from treating any citizen unfairely based merely on their place of origin, race, caste religion or any combination of these. No citizen shall be subject to any disability liability limitation or condition with respect to entry to any location or use of a site of public resort that is maintained entirely or partially with state money and is intended for public use solely on these grounds. But these provisions do not prevent the state from making special provision for women and children as well as for the advancement of any socially and educationally backgrounds classes of citizens or for the scheduled caste and the schedule tribes. Article 16 guarantees to citizens equality of opportunities in matter relating to employment or appointment to any office under the state. On the grounds only of religion, race, caste, sex, decent, place of birth, residence, or any of these, a citizen is not in eligible for or cannot be discriminated against in respect of, any employment or office under the state.<sup>ix</sup> The way in which this clause operates. First, the parliament has the authority to establish by legislation that residency in a state or Union territory is a prerequisite for employment in a given class or classes of work under those states or territories. Second, the state may reserve positions for any background class of individuals that it deems to be underrepresented in its services by making the necessary provisions for such reservations. Third, the government may enact legislation requiring the holder of a position connected to a religion.

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### **CHALLENGES FOR EQUALITY:**

1. **Gender Inequality:** Gender disparities have been noted in a variety of social and economic contexts and have been extensively documented in scholarly works. In this context gender gap refers to the observed variation in the pertinent indicators between boys and girls or between men and women. On the main obstacles that Indian policy makers must have overcome in order to achieve quicker more inclusive and sustainable growth in gender imbalance. Specifically, one of the main issues is the gender gap in the labor market. For example, in 2011- 12, Indian female labor force participation percentage (27%) is the third lowest in the south Asian region, where as the male labor participation rate (84%) is more than on third higher. They also earn less money and are disproportionately involved in unpaid and informal domestic labor. Gender disparities also exist in a number of other areas, such as education, access to productive resources, and negotiating power at home. Women face higher rates of violence at work, home, and during commutes (Jayachandran) 2021. Further, more these are still several laws that restrict women rights and possibility. During their working lives women often only receive 75% of the legal protection afforded to men. This protection might range from being prohibited from seeking certain position to not receiving equal payer being from sexual harassment (World Bank 2021).<sup>x</sup>
2. **Caste Based Discrimination:** Caste Discrimination Discriminatory and cruel, in human and degrading treatment of over 165 million people in India has been justified on the basis of caste. Caste is decent based and hereditary in nature. It is a characteristic determined by one's birth into a particular caste, irrespective of the faith practiced by the individual caste denote a traditional system of rigid social stratification into ranked groups defined by descent and occupation. Caste division in India dominate in housing, marriage, employment, and general social interaction division that are reinforced through the practice and threat of social ostracism economic boycotts and physical violence. This report focuses on the practice of untouchability



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the imposition of social disabilities on person by reason of their birth in certain cases. This practice relegates Dalits, or so called untouchable known in Indian legal parlance as schedule castes to a violence, including severe forms of torture perpetrated by state and private actor in violation of the right guaranteed by the convention.<sup>xi</sup> Even though a number of Indian leaders, most notably Prime Minister Man Mohan Singh, have denounced the practice, the government has chosen to ignore these measures in order to comply with its obligation to end caste-based discrimination, which has led to the continuation and occasionally escalation of brutalities against Dalits.

- 3. Religious Discrimination:*** Discrimination on grounds of religion and belief within the workplace raises many complex and contested issues, not least because of the multi-faceted nature of religion discrimination. Discrimination can occur where secular employes refuses to employ or accommodate religious employees as well as where religious groups refuses to employ those of a different religion or those of the same religion whose interpretation or practice of the faith differs. Adding to the complexity is the fact that freedom of religion is protected as a Fundamental Human Rights which may be enjoyed by both religion individual and religion groups. Although it is not an absolute right it's important to individual means that religious freedom may warrant a degree of protection in the work context. But the whole picture of what it may mean to not discriminate based on religion is more nuanced. This is largely because of the multi-dimensional nature of religious discrimination: religious individuals may not only be victim of discrimination but may also discriminate against other. For example, religious groups may want to employ priest or other key workers or may run a social or commercial enterprise in order to raise funds or as element of their mission. They may want to keep themselves separate from non- members and may discriminate against other in order to do so.<sup>xii</sup> Furthermore, discrimination can happen between people who practice different religions or between people who practice the same religion but with varying degrees

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of dedication or interpretation. Therefore, outlawing religious discrimination in an effort to lessen the economic disadvantage that religious minorities face raises a number of additional issues about the extent of religious freedom that employers who practice their faith should be allowed to exercise.

4. ***Economic Inequality***: In the books on changing U.S income inequality, Rebecca Blank (2011) identified several claims primarily instrumental that should motivate widespread concern about inequality especially about inequality may indicate declining income, and thus decreasing wellbeing, among individual and household at the bottom of the income distribution. Rising inequality, more specially might signal rising poverty rates. Poverty in turn has demonstrably negative. Consequence for individual, families and communities. Secondly, inequality may depress economic mobility which is generally interpreted as a measure of openness and opportunity in an economy. A substantial and growing literature, much of it cross national, suggests that high level of inequality may thwart mobility. <sup>xiii</sup>

### **CASE LAWS:**

1. ***Brown V Board of Education of Topeka, 347 U.S. 483 (1954)*** <sup>xiv</sup>: On May 17, 1954 the U.S Supreme Court decided unanimously (9-0) in a case that racial segregation in public school was unconstitutional under the fourteenth Amendment of the Constitutional which forbids states from denying any person within their border's equal treatment under the law. The ruling states that separate schools for African, American and White pupils were fundamentally unfair. Thus, the separate by equal theory – put forth by the Supreme Court in Plessy V Ferguson (1896) – that states that law requiring separate public facilities for White, Africans and American do not violates the equal protection clause if the facilities are roughly equal was rejected as being in application to public education.

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***Uttaranchal University Law College, Dehradun,***  
***Email Id(s): [dheerajgupta15264@gmail.com](mailto:dheerajgupta15264@gmail.com), [ambarsri76@gmail.com](mailto:ambarsri76@gmail.com),***

2. ***Obergefell V Hodges, 576 U.S. 644 (2015)***<sup>xv</sup>: At the time of the obergefell ruling by the Supreme Court in 2015, same sex marriage was legal in 37 states. The majority of the remaining states have either amended their Constitutions or passed laws expressly forbidding it, dubbed “Defense of Marriage Act” statutes. Due to a persistent grass roots efforts that begun decades ago the majority of states now grant marriage license to same sex couples. In 2004, Massachusetts became the pioneer states to grant marriage license to couples of the same sex. Congress enacted the federal Defense of Marriage Act (DOMA) just eight years prior. President Bill Clinton signed the DOMA into law in 1996, defining marriage as a union of a man and a woman. But the struggle to be able to marry only stronger. States started granting same sex couples civil union, which were not the same a marriage but offered many of the same rights as a state marriage law. In an ongoing battle for marital equality same sex couples in Ohio, Michigan, Kentucky, and Tennessee sued the states organization in charge of granting marriage license in their areas arguing that the denial of their marriage license was a violation of the fourteenth Amendment Due process and Equal Protection clause. The sixth circuit of appeals held that it did not despite the district court’s unanimous agreement. After granting certiorari, the Supreme Court decided to hear the case.
3. ***Justice K.S. Puttaswamy (Retd) V Union of India (2017)10 SCC1***<sup>xvi</sup> : The Indian Supreme Court nine judge panel unanimously ruled that the right to privacy is both an inherent freedom and a corollary to other right protected by the Indian Constitution. The government protected plan for a common biometrics-based identity card which could be required for access to government services and benefits, was challenged in court by retired High Court Judge Puttasawamy. The Government contended that the right to privacy was not expressly protected by the constitution. According to Article 21, which states that “No person shall be deprived of his life or personal liberty except according to procedure established by law”, the court reasonable that privacy is an instance of fundamental freedom or liberty. This is a historic case

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Uttaranchal University Law College, Dehradun,  
Email Id(s): [dheerajgupta15264@gmail.com](mailto:dheerajgupta15264@gmail.com), [ambarsri76@gmail.com](mailto:ambarsri76@gmail.com),***

that could result in constitutional challenges to several Indian Laws, including those that criminalize same sex partnership and outlaws the consumption of alcohol and beef in many Indian states observes anticipate that the Indian government could implement a data protection policy to safeguard people's privacy. Further, as privacy activist plan to use the case to further the constitutional discussion of privacy in other nations, it is expected to have broader relevancy.

4. ***Griggs V Duke Power Co., 401 U.S. 424 (1971)***<sup>xvii</sup>.: Defendant had a policy Candidate to pass an intelligence test and have a high school degree in order to be considered for some employment. African, American candidate were disproportionately affected by these rules. Plaintiff worked for Defendant as an African, American employee. He filed a lawsuit alleging that the rules had a discriminatory effect and were unrelated to work performance in violation of title VII of the Civil Right Act of 1964. Evidence was presented to demonstrate that workers who were employed into this position prior to the standard being put into place and who lacked the necessary intelligency score or a high school education did their job well and advanced in their departments. The trial court and the court of appeal determined that the policy had a discriminatory intent and concluded that there had been no violation of title VII. Certified by the U.S Supreme Court Certiorari
5. ***State of Kerala V N.M. Thomas, (1976)2 SCC 310***<sup>xviii</sup>.: In State of Kerala V N.M. Thomas the majority of a 7-judge bench of the Hon'ble Supreme Court changed the meaning of equality. It was decided that the goals of the equality scheme were to attain true equality and that Articles 14,15 and 16 were all equality rights. It was decided that Article 15(1) and 16(1), respectively do not contain any exception to Article 15(4) and 16(4).

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## **CONCLUSION:**

The goals of equality for everyone have always been something humanity has attempted to achieve in its quest for social and political freedom. Numerous resolutions have been sparked by the desire for liberty and equality. The United Nation charter documents the will of its member states to reiterate their belief in equal rights of men and women. In facts, the realization of equality in all domains is a prerequisite for the establishment of true and functional democracy complete equality between men and women in all areas of life, however, is a far- off goal that will only be attained by humanity long and ardvous journey towards social, political, and economic advancement. A nation's laws and constitution can at most guarantee its citizens a certain amount of equality. The Indian Constitution framers were aware of this. For this reason, economic and social equality was mainly left under the purview of the Directive Principle of State Policy even though they grant political and legal equality the stature of Fundamental right. In addition to providing protection against legislation enacted by legislature that discriminates the right to equality also keeps the executive branch from gaining arbitrary discretion. The executive branch of government in the modern state is endowed with enormous authority to carry out a wide range of duties including implementing laws and regulations. The equality provision forbids the discriminatory use of such authority. Only the state is prohibited from engaging in discriminatory activities by Article 14, not private parties. For example, the victim of discrimination will not have access to a court of law if the private employer such as the proprietor of a private company discriminates when selecting staff or treats them unfairly. Here, one would wonder why the constitution should not also give private individual access to these rights. There is a valid reason not to. Because of this action that extends to individual may seriously interfere with their right to liberty, rendering fundamental rights themselves unless. After all true democracy can only exist when there is a healthy balance between an individual's freedom and the limitation placed on him for the good of the community. However, the constitution also places restrictions on individual behavior in some areas. For instance, its



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outlaw's untouchable and make it illegal for any body to practice it. All in all, Article 14 established a crucial fundamental right that needs to be closely and watchfully maintained. If citizens do not have equal access to the court to safeguard their fundamental rights, then the rights to equality and equal protection under the laws becomes unattainable. Even though the constitution guarantees these rights they remain unreal unless everyone has access to decent legal representation. Without equal access to the courts for the poorer and wealthy segments of society, there can be no true equality in the rights "To sue and be sued". Evidence suggest that this issue is generally acknowledge throughout the nation and by the Indian government, which is why efforts are currently being made to set up a system of legal aid for people who are unable to pay the exorbitant legal fees that are charged throughout the nation.

<sup>i</sup> Dr. Shashi Nath Saraswati: Right to Equality [2] [2002]

<sup>ii</sup> Udai Rai Raj: Fundamental Rights and their Enforcement [450] [ 2011]

<sup>iii</sup> Dr. D.K Sherma, D.Debnath, Manisha Sexna: Dr. Ambedkar Education, Equality and Empowerment [50] [First Edition 2022]

<sup>iv</sup> Vidhi Verma: Non Discrimination and Equality in India [2011]

<sup>v</sup> Amnesty International: <https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/>

<sup>vi</sup> <https://humanrightscommitments.ca/2015/11/summary-information-international-covenant-on-civil-and-political-rights/>

<sup>vii</sup> Dr. K. Uma Devi: Women Equality [40][2000]

<sup>viii</sup> iPleader: <https://blog.ipleaders.in/equality-before-law-and-equal-protection-of-law/> [ 21/March/2022]

<sup>ix</sup> [Volume 14] [J.K. Mittal] [Right to Equality and the Indian Supreme Court] [422] [01/July/1965]

<sup>x</sup> [Purva Khera] [Macroeconomics Impacts of Gender Inequality and Informality in India] [International Monetary Fund] [2016]

<sup>xi</sup> [Volume 19 No.3] [Human Rights Watch] [Hidden Apartheid Caste Discrimination against India's Untouchable] [2007]

<sup>xii</sup> [Lucky Vickers] [Religious Freedom, Religious Discrimination and the workplace] [235] [2008]

<sup>xiii</sup> [Janet C. Gornick, Markus] [Income equality: Economic Disparities and the middle class in affluent countries] [2014]

<sup>xiv</sup> Brown V Board of Education of Topeka, 347 U.S. 483 (1954)

<sup>xv</sup> Obergefell V Hodges, 576 U.S. 644 (2015)

<sup>xvi</sup> (2017)10 SCC1, AIR 2017 SC 4161

<sup>xvii</sup> Griggs V Duke Power Co., 401 U.S. 424 (1971)

<sup>xviii</sup> State of Kerala V N.M. Thomas,(1976)2 SCC 310