

Fundamental Right to Equality – Comparison and Contrast between the Constitutions of the United States of America and India

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I. INTRODUCTION

It is notably said that things which look similar from distance, may not be similar on observing it from close. Applying the same principle on the relations between United States of America (**United States**) and India in the light of Right to Equality, observation says that besides having similarity in the words expressing the provision related to 'Right to Equality' both countries share difference in the application of the right. Besides both being ethnically and culturally pluralistic societies which have a democratic form of government and similar judicial systems they have different interpretation of the same right. Scope of the right is not similar in both the countries¹.

United States had derived this right from Declaration of Rights and most importantly, from the Bill of Rights. It was inserted in the Bill of Rights through fourteenth Amendment in year 1868, but differently, in India legislative assembly had the intent to inculcate this right in the constitution at the initial level. Assembly did the same by inserting them in Chapter III named as 'Fundamental Right'. This became the basic difference between two. The intention differs among the nation². With the fundamental rights, the Indian Constitution prescribes the reasonable restriction for the Rights. Assembly took this step to restrict the power of this right and for judicial use of the right. But, there is no as such specified provision for restriction of the power in latter country. This was left with the judiciary who interprets the provision according to the situation and also as per the diligence of the judges. Evidence being, the cases of Doctrine 'Separate but equal' where even after the amendment, the decision in favor of racial discrimination was given³ and later on it was struck down⁴. In India, the decisions are taken in the light of the provisions of the constitution.

¹ P. C. Alexander, Equality As A Fundamental Right In India, Indian political science publication, 1948

² Casper, Gerhard. 1996. Speech to the Faculty Senate, October 1995. <http://www.stanfordalumni.org/news/magazine/1996/sep/oct/articles/casper.html>

³ Plessy v. Ferguson, 163 U.S. 537 (1896)

“This right even extends to the members of the senate. Members from each state attained the session in equal number regardless of the population, area or any other criteria. In India, number of representative attending the session from a state is as per the population of the state. Provision of equality in United States extends till this level. In addition to this, unlike United States Constitution, Indian Constitution expressly provides for the affirmative action. It is the helping hand for the one who do not able to raise their voice for the suppressed rights. This is mainly for the minority classes and the one who are suppressed by the society in surrounding. Certain measures are taken for them by the legislation on the directions of the constitution. One of the tools used by the Indian Government is the ‘Reservation’ or ‘Quota’. This is not the legislative step taken for the minority; this is a direction by the supreme legislature i.e. Indian Constitution for their upliftment. But, the government of United States does not have any obligation as such and minority does not have protection from the Bill Of Rights. Their protection depends on the legislature only.”⁵

As it can be noticed that the Right of equality is well established principle from long with the various application of the principle in many cases as it was inserted in the Bill of Rights long back. But, in India it is not old as compare with the former case. With the evolution of the cases in this perspective, the judiciary is expanding the scope of the equality with the changing condition. Illustration for this is Right to Education⁶. This right is given to the kids in both the countries, but the privileges under this differ in both the country. Indian legislature only says for the basic and compulsory education to the children from the age 6-14. It extends this to the government school where the education is not good which can be practically observed also. The standard of the education at these schools are not good for the future of the nation. On the other side of the coin, though United States has provided the education to the children but the level of the education given differs in the country. The country focuses on the standard of the education given to the children. It is said that qualitative result is considered by the government⁷.

Hence, the citizen in both the country get access of this right equally as per the statutes but there are certain aspects in the term equality, which regardless of the country, should be incorporated in both the countries for expanding this term more widely and also for providing privileges to the one under this right. In this paper, the right to equality will be compared on certain grounds in two countries and hence will see the difference and also the areas for their development⁸. The implementation of this law is necessary for the wholesome development of the country which makes it important to explore more in this field and to study more.

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⁴ Brown v. Board of Education, 347 U.S. 483 (1954)

⁵ Geoffrey stone et al., constitutional law 435-37 (1986)

⁶ Otis H. Stephens, American Constitutional Law, 5th ed.,2012

⁷ Paul J. Mishkin, Law and Contemporary Problems, Duke University School of law, 1980.

⁸ P. C. Alexander, Equality As A Fundamental Right In India, Indian political science publication, 1948

II. RESEARCH QUESTIONS

- What is the extent of comparing the fundamental right to equality between the United States of America and India?
- Whether the proper implementation of the fundamental right to equality has helped in improving the governance in both the countries, i.e., India and the United States?
- Whether the judicial decisions have helped in improving the position of fundamental right to equality in India and the United States?

III. CONCEPTUAL FRAMEWORK

Introduction

Once, Homes, C.J. observed in a case that: “The provisions of the constitution are not mathematical formulae having their essence in any form; they are organic living institutions transplanted from English soil. Their significance is vital not formal; it is not gathered by taking the words simply from a dictionary, but by considering their origin in line of their growth”.⁹

This statement indicates that every constitution has its own basis of evolution. It embraces a certain pattern of rules to develop the adopted structure of constitution. “A federal state has a central authority and also has one at the state level to work in different departments for the formation, execution and implementation of the policies at its own level. The policy laid down need not to be exhaustive all together, but can widen gradually with the interpretation its scope¹⁰. This paper in subsequent pages will explore the differences between the constitutional framework of India and the United States, on the basis of rule established and will elaborate upon the difference between the concepts of “Right to Equality.”¹¹

DIFFERENTIATING on the basis of right to equality:

Reasonable restriction:

Article 14 of the Indian constitution creates a strong base for the constitution by abolishing discrimination among the citizens, similar to “The Bill of rights” provision given under the United States. However, India has a concept of reasonable classification which means to treat certain people unequal when circumstances arise. The state can treat such people differently if the conditions justify the circumstances¹². The court in this case, stated that rule of law can be invalidated when there is arbitrariness or unreason ability. The judiciary can strike down

⁹Gompers v. United States, 233 U.S. 604 (1914)

¹⁰<https://blog.ipleaders.in/difference-us-indian-federalism/>

¹¹ Where USA and India both the countries follow the similar pattern of justifying the action on the basis of the “Right to equality.”

¹²https://www.legalbites.in/law-notes-constitution-right-to-equality-under-article-14-of-constitution/#_ftn27

the law, but this rule can only be applied with reasonable classification imposed as a subsidiary rule to this article. However this imposition cannot be arbitrary.”¹³

The institutions under the Civil Rights Act, 1964 mutually with other Supreme Court rulings, defined the American affirmative action program, which was not quota based. United States provides special status to the women and minorities through different legislative schemes; however this did not empower the community. The term Quota refers to the fixing of percentage for the purpose of reservation for a specific group of individuals. Therefore, this method of quota system can be used to strengthen the concept of “Right to Equality” which will bring these unequitable groups at par with others.¹⁴

Incorporation of the Right:

It has been stated that all men are created equal, that they are endowed by their creator with certain unalienable rights, which include right to life, liberty, and the pursuit of happiness.”¹⁵

Owing to this provision, “The Bill of rights” forbids the states from denying any person the right to “life, liberty or property, without due process of law” or to “deny to any person within its jurisdiction the equal protection of the laws.”¹⁶ These two rights were incorporated in the United States late on but initially there was no legislative intent for incorporating this right. It was incorporated because of the dynamic changes in the state. On the contrary, the Indian legislation had the intent of incorporating this right from the very beginning.

Social Injustice: Law vs Norms:

It can be seen that the right to equality does not provide any social equality in America. On the other hand, the Article 14 under the constitution of India explicitly denies the discrimination amongst any group of individuals. The court has the power to deny any law invalid on the ground of discrimination. Recent example of Triple Talaq case proves the protection to the minority group. Extending the rope to the United States, the minorities face discrimination there. In lieu of a practice in the United States, if a community is excluded in any law and faces disparities, and the judiciary does not declare such law as invalid then disparity will continue till the time any other amendment has been made or any judgment has been passed in their favor.”¹⁷ Classic example of this is the Negroes in the United States who got their rights by way of the amendment in a law.”¹⁸ While considering the recent scenario, 61 percent of Hispanics say “there is a lot of discrimination against” blacks, 71 percent say

¹³ **Bachan Singh V. State of Punjab**, AIR 1980 SC 898.

¹⁴ *ibid*, 4.

¹⁵ <https://www.britannica.com/topic/Declaration-of-Independence>

¹⁶ BOOK

¹⁷ P. C. ALEXANDER, EQUALITY AS A FUNDAMENTAL RIGHT IN INDIA, THE INDIAN JOURNAL OF POLITICAL SCIENCE, 1948

¹⁸ *Missouri Ex. Rel. Gains vs Canada Case* (1939)

the same of themselves.”¹⁹

Children’s rights:

The difference between the rights of the children in both the countries is not very prominent. Both the countries have more or less the same position with respect to the rights provided to children. Difference lies in the age group prescribed by the law for the compulsory education of the children. In India the children between the age group of 6 to 14 years are entitled to get compulsory education as prescribed by the law. Whereas in the United States the age limit prescribed is till 16 years as it is considered that the child becomes mature and is capable of handling any kind of work individually.²⁰

Gender Inequality:

Women being the most important and debatable part of the world population have special laws for their protection in both the countries. Although there are ample number of laws in the favor of the women but the problem lies in the implementation and the execution of these laws. The rights of the women in comparison to India are protected more in the United States²¹.

The United States is an exception for the traditional roles and rules, and is widely prevalent in the world. With the growth of “liberal feminism” in the United States which attracts activists’ focus on women’s independency with its own personality, passions and pursuits due to which they become more confident, educated etc. Along with this, the concept of “radical feminism” also arose and changed the stereotype attitude and beliefs of the people.²²

The rights in terms of the opportunity, employment for the women are more enhanced in the United States. In India the guidelines on protecting women from harassment at workplace were included very recently but the United States on the other hand had a settled law regarding this issue and the women in their country were highly empowered and independent whereas, women in India are still struggling for equal rights. It will take decades to improve the situation of women in India.²³

Dual Citizenship:

The United States provides the citizens living there with the dual citizenship certificate. The bill of rights is applicable in all the states forming federal country which binds every state to follow the same set of rules which

¹⁹ https://www.washingtonpost.com/news/the-fix/wp/2014/09/22/the-most-discriminated-against-people-in-america-its-people-like-you-of-course/?noredirect=on&utm_term=.a8232f8af4f8

²⁰ Bhagwan, Bhushan and Mohla, World constitution-A comparative Study, Sterling, ed. 11, 2017.

²¹ <https://www.esamskriti.com/e/National-Affairs/Current-Affairs/Differences-On-Women-colon-S-Rights-And-Choice-Between-The-US,-India-And-The-Middle-East-1.aspx>

²² Supra, 16.

²³ <http://www.yourarticlelibrary.com/india-2/law-and-status-of-women-in-india/47397>

results into equality of laws both at state level and central level. All the states circumscribe the laws for internal race among the countries. Right to equality being the foundation of all rights is given importance in every country. Also because of the competition, the countries strengthen this rule.

Coming on to the Indian situation, there is no provision in the law regarding the concept of dual citizenship. Every citizen of India has only when citizenship in its name, however it is observed that Articles 14 and 15 of the constitution are considered as the supreme law of India therefore the rules are mainly based on these provisions. Despite of these provisions provided by the constitution there is discrimination done on the basis of caste, sex, religion, race etc. Therefore, India is still struggling in strengthening the privileges provided under the "Right to equality".²⁴

IV. AMERICAN INFLUENCES ON THE DEVELOPMENT OF INDIAN AFFIRMATIVE ACTION

The most noteworthy influence of the United States on the Indian affirmative actions is the incorporation of the language taken from the Equal Protection Clause under the Fourteenth Amendment into Article 14 given under the constitution of India²⁵. Article 14 reads as -"The State shall not deny to any person the equal protection of the laws"²⁶. This is different from the Fourteenth Amendment of the United States which provides debatable support to affirmative action, whereas, Article 14 of the Indian Constitution has been there to actually endorse affirmative action. The Indian Equal Protection Clause, parallel to its American counterpart, applies only to state action²⁷." On the other hand Article 14 analysis has employed the "rational basis test," as has also been used in equal protection analysis under the Fourteenth Amendment of the United States²⁸. In both the countries, the rational basis test provides a system of evaluating the constitutional validity of legislation.' This standard of review automatically gives great admiration to the legislature²⁹. In Indian constitutional law, the rational basis test would, for example, be used in determining whether quotas created for untouchables satisfied the equal protection guarantee of Article 14³⁰.

The equal protection analysis done in India has not adopted nor has approved of any "strict scrutiny" standards,

²⁴<https://www.modernghana.com/news/209842/the-benefits-of-dual-citizenship-to-the-socio-economic-and-p.html>

²⁵Siobhan Mullally, *Feminism and Multicultural Dilemmas in India: Revisiting the Shah Bano Case*, 24 *OxForDJ. LEGALAFF.* 671, 681 (2004).

²⁶The omitted portion of Article 14 which states "equality before the law" is a British concept. The Equal Protection Clause is given greater importance in construing the meaning of Article 14. *Id.*

²⁷*Affirmative Action in the United States and India: A Comparative Perspective*. UK: Routledge, 2004.

²⁸SINGH, In short, the rational basis test looks at whether the statute in question intends to achieve any legitimate end and whether the statute helps to achieve the end in any conceivable manner possible. *TRIBE*, *supra* note 1, at 1439-43.

²⁹NOWAK & ROTUNDA, *supra* note 20, at 574-75.

³⁰Alger, Jonathan R. 1998. "Unfinished Homework for Universities: Making the Case for Affirmative Action." *Journal of Urban and Contemporary Law* 54(73).

such as the "compelling state interest" test or "intermediate scrutiny"³¹. However, the Indian legislature deliberated that the rational basis test is sufficient because, unlike in the United States, legislation has occasionally been used as a means of discrimination against untouchables in India³². The motive of strict scrutiny was to question the legislation that discriminated on the basis of race or any other "suspect classifications" to a higher judicial standard of constitutional review³³. In India a scholar has stated that- the fear is not so much from state-sponsored discrimination as it is from the social discrimination³⁴. India's omission of "strict scrutiny" also avoids the problem of determining which standard of review to apply to "benign classifications" or legislation favorable to minorities; since affirmative action is rooted in the Indian Constitution, benign inclinations are more likely to satisfy the rational basis test. Although Indian judges have cited U.S. affirmative action decisions and law review articles in their opinions,' but the case law has never been cited as legal precedent in India. It has, nevertheless, been used to back the approach that affirmative action can exist combined with a constitutional system which stresses equality³⁵.

The influence from the United States began on the Indian society as and when India was in the process of creating and writing its constitution. For instance, Mr. B.N. Rao, who was the first Indian constitutional advisor, visited the United States and implored the views of many influential and significant American judges and scholars. Certainly, the most prominent Indian to be prejudiced and influenced by the United States was Dr. B.R. Ambedkar. He was the great untouchable scholar and Chairman of the Constitutional Committee of India³⁶. While Dr. Ambedkar, was in Columbia, he was inspired by the legal constructs which the Fourteenth Amendment had guaranteed and assured the blacks greater freedoms³⁷. " One of Dr. Ambedkar's American idols was Booker T. Washington, the black reformer and educator." Ambedkar's revolution for the emancipation of untouchables was significantly influenced by American ideals of equality³⁸."

The most interesting fact about both the U.S. and Indian affirmative action systems is that they function in the similar political environments. Both of these countries are ethnically and culturally mixed societies which have a democratic form of government and similar judicial systems. There is also a great deal of controversy over the

³¹See supra 22.

³²See Supra, 25.

³³J. BARRON ET AL., Constitutional law 488-98 (1987).

³⁴*Bonita C. Meyersfeld, Reconceptualizing Domestic Violence in International Law*, 67 *ALB. L. REV.* 371, 420 (2003) (discussing *United States v. Morrison*).

³⁵*Supra* note 27.

³⁶Dr. Ambedkar, who collected a remarkable number of degrees and honors, studied at Columbia University in 1916 and also attended colleges in India and Great Britain.

³⁷W. Kuber B. R. Amenbkar 21 (1978).

³⁸It is interesting to note that a Post-Ambedkar movement named the "Dalit Panthers" sprang up India which was patterned after the Black Panther movement among the blacks in the United States.

fairness of affirmative action in both societies³⁹.

For instance, certain Indian states have experienced riots and other forms of violent protest over affirmative action⁴⁰. Despite of the Indian government's support for affirmative action, social support has been much more divided. The very thought of reverse discrimination generates disagreement among Indians and Americans alike. Due to the political and social similarities that exist in both the countries in regard to affirmative action, the potential for continued future interaction is significant in nature.

Despite the differences in form and structure of both the countries, the opposition to affirmative action is very similar in nature. The main standard objections to this are- merit/efficiency is dropped down as a result of less qualified candidates; preferences dilute incentives for self-improvement among the target groups; profits of affirmative action do not reach the 'real' beneficiaries, but are cornered by the better-off sections of the target groups; Affirmative Action divides society along race/caste; historical deprivation does not warrant the current Affirmative Action program, since contemporary society has moved away from the historical pattern of disparity; finally, class matters more than ethnicity, so all preference schemes must be only class driven and ethnicity neutral⁴¹.

V. JUDICIAL INTERPRETATION OF THE EQUAL PROTECTION IN UNITED STATES

The constitution of the United States was amended with three new amendments after the American Civil War: a) the Thirteenth Amendment in the year 1865, which abolished slavery; b) the Fourteenth Amendment in the year 1868, which granted citizenship to former slaves; and c) the Fifteenth Amendment in the year 1870, which guaranteed former male slaves the right to vote in the elections.

The Fourteenth Amendment placed a significant federal limitation on the states by forbidding them to deny to any person the right to their "life, liberty, or property, without due process of law" and ensuring every person within a state's jurisdiction with the equal protection of its laws." Later interpretations by the Supreme Court of the United States in the 20th century gave these two clauses added significance. Through the case of *Gitlow vs. New York* (1925), the due process clause was interpreted by the Supreme Court to widen the applicability of the Bill of Rights, protection of speech to the states, holding both levels of government to the same constitutional standard. Likewise during following decades, the Supreme Court selectively applied the due process clause to protect from state infringement other right and liberties guaranteed in the Bill of Rights, a process which is known as "selective incorporation"⁴²." These particular rights and liberties included freedom of

³⁹ John Wood, *Reservations in Doubt: The Backlash against Affirmative Action in Gujarat, India*, 60 **PAC. AFF.** 408 (1987).

⁴⁰ *Supra*, 33.

⁴¹ *Affirmative Action in Higher Education in India and the US: A Study in Contrasts, Research & Occasional Paper Series: CSHE.10.06*, University of California Berkeley

⁴² https://www.americanbar.org/groups/public_education/initiatives_awards/law-day-2017/fourteenth_amendmenttimeline.html

religion, press and the right to a fair trial, including the right to an impartial judiciary and to the assistance of counsel. Most controversial were the Supreme Court's use of the due process clause to ground an implicit right of privacy through the case *Roe v. Wade* (1973), which led to the nationwide legalization of abortion, and its selective incorporation of the Second Amendment's right to "keep and bear Arms" in the case of *McDonald v. Chicago* (2010)⁴³.

The Supreme Court then further applied the equal protection clause of the Fourteenth Amendment in its landmark decision- *Brown v. Board of Education of Topeka* (1954), in which it ruled that racial segregation in public schools was unconstitutional. In the 1960s and '70s the equal protection clause was used by the Supreme Court to encompass protections to other areas, including zoning laws, voting rights, and gender discrimination.

VI. JUDICIAL INTERPRETATION OF THE EQUAL PROTECTION IN INDIA

"Equal protection of law" has been stated under the Article 14 of our Indian constitution which has been derived from Section 1 of the 14th amendment act of the Constitution of the United States.

In the case of *Indira Sawhney vs. UOI*⁴⁴ the right to equality was recognized as one of basic features embodied in the constitution of India. Article 14 of the Indian Constitution applies to all people and is not limited to citizens only. A corporation, which is a juristic person, is also entailed to the benefit out of this article. This concept implied equality for equals and aims at striking down hostile discrimination or oppression of inequality. In the case of *Ramesh Prasad v. State of Bihar*⁴⁵, it was noted that aim of both the concept, 'Equality before law' and 'Equal protection of the law' is the equal Justice. Article 14 of Indian constitution law says that all are equal in the eye of law. No one can prevent the state from making any special provisions for women and children. In *Choki v. State of Rajasthan*⁴⁶, the court has held that it valid on the grounds make special Provision for women and therefore, it is protected under article. Article 15(4) has been inserted by the constitution (first amendment) Act, 1951.

In *D.S Nakara v. UOI*⁴⁷, in this case Supreme Court stated the Rule 34 of the Central Services (Pension) Rules, 1972 as unconstitutional on the ground that the classification made by it between pensioners retiring before a certain date and retiring after that date was not dependent upon the any rational principal, it was arbitrary and was violating the Article 14 of Indian Constitution.

Therefore, Keeping in mind the above mentioned statements stated by the different courts, it is unblemished

⁴³ Gupta, Asha, Affirmative Action in Higher Education in India and the US: A Study in Contrasts, UC Berkeley Research and Occasional Papers Series

⁴⁴ *Indira Sawhney & Ors v. Union of India*. AIR 1993 SC 477 : 1992 Supp (3)SCC 217

⁴⁵ *Ramesh Prasad v. State of Bihar*, AIR 1978 SC 327

⁴⁶ *Choki v. State of Rajasthan*, AIR 1957 Raj 10

⁴⁷ *D.S Nakara v. Union of India*, 1983 SCR (2) 165

that the clause of right to equality gives the ensured the rights of equality without discrimination in both India and United States. It states that everyone is Equal in eye of law, irrespective of the fact that he belongs to a different race, religion, social status or wealth. Equality before the law means that among equals the law should be equal and should be equally delivered and treated alike.

VII. CONCLUSION

India and the United States share many resemblances, suggesting that their systems are actually not so different, although their ideological views toward individual rights and substantive equality have stemmed in very different constitutional regimes. "India has developed a legal system that is possibly more similar to that of the United States than any other country in the world, especially in the field of constitutional law⁴⁸." The constitutions of both the countries guarantee alike individual rights. Both privilege the constitutional courts with great powers of judicial review, including the ability to strike down legislation, and both share the common tradition of the British common law. However, the Indian method toward affirmative action, as an example of a project to further equality, focuses on eradicating the continued effects of social hierarchy that have disseminated the inferior socioeconomic status of some certain groups⁴⁹. The difference between these ideas toward equality can be illuminated by the focus either on the individual or on groups and the benefits individuals receive based on their position in society's hierarchy. President Johnson's recognition of the actual conditions of inequality⁵⁰ - both the lived realities of individuals and the persistence of inequality among societal groups - would have presented a paradigm shift in the American civic religion. On the contrary, such recognition of collective disadvantage monitors India's approach to attaining greater equality.

The comparison of these two approaches towards equality provides some interesting modules. First, the absolute furtherance of either of these approaches to equality would not be advisable. A purely collectivist, results-oriented push for substantive equality finds its strongest expression in the rhetoric of Marxism, which, in practice, denies the inherently unequal qualities of individuals, damages individual liberty, and even proves unproductive at eliminating true inequalities. India's system recognizes the value of achieving substantive equality while also protecting individual freedoms and rights. An entirely individualist approach toward equality of opportunity can be found in early America and, to some extent, this formalistic approach persists till date. It negates that there are very different opportunities available to those born within an existing social hierarchy, and defends existing inequalities by referencing the formal equality of every individual under the

⁴⁸ Clark D. Cunningham, *Global Views: Affirmative Action: India's Example*, C.R.J. 22, 23 (Fall 1999).

⁴⁹ Robert B. Reich, *Introduction to MAKING WORK PAY: AMERICA AFTER WELFARE*, at vii (Robert Kuttner ed., 2002).

⁵⁰ Andr  B6taille, *Caste and Reservations: Lessons of the South Indian Experience*, HINDU, Oct. 20, 1990.

law⁵¹. Secondly, each of these methods result in very different legal principles, which can be concised as an effects-based inquiry into achieving equality on one hand or a formalistic goal of ensuring antidiscrimination on the other. Each of these standards has its own downsides. Primarily concerned with the effects of past discrimination and continuing socioeconomic stratification of castes, while the Indian approach, at least in theory, emphasizes on achieving the ideal of a society which is free from undeserved inequality. However, the resentment that such programs of the Indian approach have generated reflects the shared principles of individual rights and merit that have prevented adoption of such programs in the United States. The objections of the upper classes in India reflect the despair among their young people that they are themselves disadvantaged, with some feeling a distinct shortage of opportunity. Whether their perceptions reflect a truthful view is debatable, but the conflicting ideals nevertheless present Indian leaders and voters with a difficult harmonizing of interests⁵².

This particular paper analyses the more collectivist principles of true equality and the more individualist principles of liberty as if they are diametrically opposed. To some extent, they must conflict. The incompatibility of these principles is demonstrated in the discussion of the opposition of Enlightenment ideals to concepts like welfare reform and affirmative action.

VIII. SUGGESTIONS

- The Indian approach still lacks the idealistic moral authority of achieving a unified society where caste, class and race are no longer contemplated. The mindset of the society needs to change and government should help in promoting the elimination of discrimination.
- There is a lack of opportunity and relative barrier to full equality, especially for the disadvantaged group's like- women, old, differently abled, gender minority and economically weaker section. The government should come up with more stringent rules and regulations which could help ensuring their right to equality.
- Despite of several laws guaranteeing equality the society still suffers with discrimination and continuous socio-economic stratification of castes. The government should come up with some set of rules or regulations that can address this issue more passionately.
- In US there should be a focus on eliminating unequal effects among the society groups so that there is opportunity for all individuals to achieve equal success.

⁵¹ Nicole Lillibridge, *The Promise of Equality: A Comparative Analysis of the Constitutional Guarantees of Equality in India and the United States*, William & Mary Bill of Rights Journal, Volume 13 | Issue 4

⁵² John Hasnas, *Equal Opportunity, Affirmative Action, and the Anti-Discrimination Principle: The Philosophical Basis for the Legal Prohibition of Discrimination*, 71 *FORDHAM L. REV.* 423, 429-41 (2002).

- Indian society is shaped by the values of social responsibility together with the values of liberalism and individual rights. This demonstrates an acknowledgment of existing injustices. There should be more awareness towards this issue and concrete steps should be taken to ameliorate them.
- The Center and State government should not treat children in two different categories based on their status, employ or income with regard to their right to education.

IX. REFERENCES

Books Referred

- Bhagwan, Bhushan and Mohla, World constitution-A comparative Study, Sterling, ed. 11, 2017.
- SIBNATH DEB AND BEN MATHEWS, CHILDREN'S RIGHTS IN INDIA: PARENTS' AND TEACHERS' ATTITUDES, KNOWLEDGE AND PERCEPTIONS, BRILL PUBLICATION, 2012.
- CONSTITUTIONAL LAW OF INDIA BY DR. J N. PANDEY (CENTRAL LAW PUBLICATION), 2016
- Select Constitutions of the World by M.V Pylee, 2017
- P.K. Majumdar & R.P. Kataria, The constitution of India, Orient Publishing Company, 11th ed., 2014
- Otis H. Stephens, American Constitutional Law, 5th ed., 2012

Articles Referred

- Bruce A. Hunt jr., Locke on Equality, Sage publication, 2016
- Paul J. Mishkin, Law and Contemporary Problems, Duke University School of law, 1980.
- P. C. ALEXANDER, EQUALITY AS A FUNDAMENTAL RIGHT IN INDIA, INDIAN POLITICAL SCIENCE PUBLICATION, 1948.
- M. Varn Chandola, The Affirmative action in India and United State: the untouchables and Black experience, 1993
- Verba, nie and kim, Participation and political equality, University of Chicago Press, 1987.
- Alger, Jonathan R. 1998. "Unfinished Homework for Universities: Making the Case for Affirmative Action." Journal of Urban and Contemporary Law 54(73).
- Deshpande, Ashwini. 2005. "Affirmative Action in India and the USA". World Development Report on Equity and Development. Washington DC: World Bank.
- Affirmative Action in the United States and India: A Comparative Perspective. UK: Routledge, 2004.
- Bonita C. Meyersfeld, *Reconceptualizing Domestic Violence in International Law*, 67 ALB. L. REV. 371, 420 (2003) (discussing United States v. Morrison).
- Siobhan Mullally, *Feminism and Multicultural Dilemmas in India: Revisiting the Shah Bano Case*, 24 OxFoRDJ. LEGALAFF. 671, 681 (2004).

- *Rajeev Dhavan, Borrowed Ideas: On The Impact Of American Scholarship On Indian Law, 33 AM. J. COMP. L. 505-26.*
- *Robert B. Charles, Special Project, American Influence on the Indian Constitution: Focus on the Equal Protection of the Laws, 17 COLUM. HUM. RTS. L. REV. 193, 193 (1985/86).*

Websites

- Casper, Gerhard. 1996. Speech to the Faculty Senate, October 1995. <http://www.stanfordalumni.org/news/magazine/1996/sep/oct/articles/casper.html>
- Coleman, Mary Sue. 2002. "Mary Sue Coleman is U-M's 13th President," Michigan Today (Summer). <http://www.umich.edu/~newsinfo/MT/02/Sum02/mt5j02.html>.
- Sowell, Thomas. 2004. "Affirmative Action around the World: An Empirical Study." <http://www.townhall.com/columnist/thomassowell/ts200000030108.shtml>
- https://www.washingtonpost.com/news/the-fix/wp/2014/09/22/the-most-discriminated-against-people-in-america-its-people-like-you-of-course/?noredirect=on&utm_term=.a8232f8af4f8
- http://siteresources.worldbank.org/INTWDR2006/Resources/477383-1118673432908/Affirmative_Action_in_India_and_the_United_States.pdf
- <https://blog.ipleaders.in/difference-us-indian-federalism/>

Documents/statutes referred

- The Constitution of India, 1948.
- The Declaration of Independence.
- The Bill of Rights.
- Constitution of the United States of America, 1787