



ROLE OF JUDICIARY TOWARDS RIGHT TO EQUALITY IN INDIA

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Abstract-- The judiciary plays a pivotal role in upholding the right to equality within a constitutional framework. By interpreting and enforcing laws, the judiciary ensures that all individuals receive equal protection under the law, regardless of their background or status. Through landmark judgments and judicial review, the courts act as a safeguard against discrimination, thus promoting a just and equitable society. My purpose behind writing this research paper is to find out whether we have been able to achieve the goal of equality after 75 years through the provisions given in the Constitution to achieve the goal of equality? It is clearly written in our Constitution that the state should make such policies that all the citizens of our country can get social, economic and political justice equally without any discrimination. The concept of equality means that all individuals are entitled to the same rights, opportunities, and treatment, regardless of their background or characteristics. It's a fundamental principle that ensures fairness and impartiality in society. While equality often focuses on treating everyone the same, equity recognizes that individuals may have different needs and circumstances, requiring tailored support to achieve equal outcomes. The Indian judiciary plays a crucial role in upholding the right to equality, a fundamental principle enshrined in the Indian Constitution. Through landmark judgments and interpretations, the judiciary has actively worked to eliminate discrimination and promote a more egalitarian society. It acts as a watchdog against violations of fundamental rights and ensures that all citizens, regardless of their background, are treated equally under the law. On this subject, we will also analyze what has been the contribution of the judiciary of India, which is called the guardian of the Constitution.

Keywords- *Constitution of India, Fundamental Rights, Right to Equality, Indian Judiciary, Supreme Court. of India.*

INTRODUCTIONS

The judiciary in India acts as the guardian of the Constitution by interpreting its provisions and ensuring that they are upheld. It serves as a check on the executive and legislative branches, ensuring that all actions align with constitutional values. This function is essential in maintaining the rule of law and protecting citizens' rights. The judiciary in India plays a crucial role in upholding the law of equality as enshrined in the Constitution. It acts as a guardian of fundamental rights, particularly the right to equality, by interpreting and enforcing laws that prevent discrimination. Through landmark judgments the judiciary has ensured that various social and economic inequalities are addressed, promoting a more equitable society. By acting as a check on the other branches of government, the judiciary ensures that the principle of equality is not just a theoretical ideal, but a practical reality for all citizens.

WHAT IS RIGHT TO EQUALITY?

The right to equality means that all individuals are treated equally before the law, without any discrimination on the grounds of religion, race, caste, sex, or place of birth. It ensures that everyone has equal access to opportunities and protection under the law. It's a fundamental right that aims to create a fair and just society. The Indian Constitution guarantees several types of equality. Firstly, there's equality before the law,¹ which means that all individuals are subject to the same laws of the land. Secondly equal protection of the laws² ensuring that no individual or group is unfairly treated and finally, there's the prohibition of discrimination on grounds of religion, race, caste, sex, or place of birth.³ These principles are all aimed at creating a fair and just society. The Indian Constitution guarantees the following three kinds of justice as stated in its Preamble:⁴

1. Social Justice Ensures equal treatment for all citizens regardless of caste, religion, gender, or economic status.

¹ Article 14 of the constitution of India 1950

² Ibid

³ Article 15(1) of the constitution of India 1950

⁴ The preamble of the constitution of India 1950



Aims to remove social inequalities and promote dignity for all, especially the underprivileged. Examples: Abolition of untouchability (Article 17) and reservations for SC, ST, and OBC.

2. Economic Justice Seeks to reduce the gap between the rich and the poor and provide fair opportunities for employment, income and resources reflected in: Directive Principles of State Policy (e.g., Article 39 – equal pay for equal work).

3. Political Justice Guarantees equal participation in the political process. Every citizen has the right to vote, contest elections, and express political opinions freely. It is ensured through universal adult suffrage Article 326 and free and fair elections.

These are three justices together their aims to establish a just, fair, and inclusive society in India.

JUDICIARY AS A GUARDIAN OF INDIAN CONSTITUTION

Article 13 of the Indian Constitution basically states that any law that is inconsistent with or in derogation of the fundamental rights shall be void.⁵ The judiciary plays a key role in interpreting this article by reviewing laws and ensuring they comply with the fundamental rights guaranteed in the Constitution. This ensures that the laws remain just and fair for all citizens. The judiciary in India acts as the guardian of the Constitution by interpreting its provisions and ensuring that they are upheld. It serves as a check on the executive and legislative branches, ensuring that all actions align with constitutional values. This function is essential in maintaining the rule of law and protecting citizens' rights.⁶

JUDICIARY APPROACH TOWARDS RIGHTS TO EQUALITY

The judiciary in India plays a crucial role in ensuring the Right to Equality as guaranteed by the Constitution, especially through its interpretation and enforcement of laws. Here's how the judiciary approaches the Right to Equality:

INTERPRETATION OF FUNDAMENTAL RIGHTS

The judiciary interprets the provisions of the Constitution, particularly Article 14 (equality before the law)⁷ and Article 15 (prohibition of discrimination),⁸ to ensure that no law or government action violates the right to equality. The courts examine whether laws or policies unfairly discriminate against certain groups or individuals.

JUDICIAL REVIEW

One of the most important functions of the judiciary is judicial review, where the courts review the constitutionality of laws. If any law or executive action is found to be discriminatory or violating the principles of equality, the courts can strike it down.⁹ For example, in cases where affirmative action programs (like reservations for backward classes) are challenged, the courts balance the need for such measures with the principle of equality.

LANDMARK JUDGMENTS

Several landmark judgments have shaped the Indian judiciary's approach to equality:

The Supreme Court in the case of **Pradeep Tandon vs Union India (AIR 1974 SC)¹⁰** held reservation in medical colleges on the basis of domicile and residence unconstitutional but gave some exceptions to it like special need of the state and backwardness of the area. The Supreme Court of India addressed the constitutionality of

⁵ Article 13 of the constitution of India 1950

⁶ Prof. B.N. Shukla' Constitution of India 1950

⁷ The constitution of India 1950

⁸ Ibid

⁹ Prof. J.N.Panday: Constitution of India

¹⁰ AIR 1975 SC,563, 1975SCR(2) 761



reservations in medical college admissions in Uttar Pradesh. The state had implemented reservations for candidates from rural areas, hill areas, and the Uttrakhand region. The court ruled that reservations based solely on residence in rural areas were unconstitutional, as rural residence did not automatically equate to social and educational backwardness.

The case of **Air India v. Nergesh Meerza 1981¹¹** is a landmark judgment by the Supreme Court of India that addressed issues related to gender discrimination and female cabin crew employment rights in Air India. The Supreme Court struck down Air India's discriminatory service conditions as unconstitutional and arbitrary. The Court held that the requirements constituted hostile discrimination, violating Articles 14, 15 and 16 of the Constitution.

The Court reasoned that the service conditions were based on stereotypical assumptions about female flight attendants and did not rationally relate to the job's duties. Requiring women to retire earlier than men and restricting their opportunities for promotion were unjustified. **Champakam Dorairajan vs State of Madras¹²** In 1948, the Madras government introduced the Communal General Order, widely referred to as the Communal G.O., which apportioned admissions to educational institutions based on caste — out of every 14 seats, 6 were to be allotted to non-Brahmin (Hindus); 2 to Backward Hindus; 2 to Brahmins; 2 to Harijans; 1 to Anglo-Indians and Indian Christians, and 1 to Muslims. The Honorable Supreme Court held the law as void as it classified students on the basis of caste and religion irrespective of Merit. The Court also held that the Directive Principle of State Policies cannot override the Fundamental Rights.

The case of **M.R. Balaji and Others vs. State of Mysore (1963)¹³** is a landmark judgment by the Supreme Court of India that dealt with the extent and criteria for reservations in education under Article 15(4) of the Constitution. The court addressed the validity of the Mysore government's order that reserved 68% of seats in medical and engineering colleges for backward and more backward classes, based primarily on caste. The court held that reservations under Article 15(4) should generally be within reasonable limits and should not exceed 50%. The court found that the Mysore government's 68% reservation was excessive and invalid. The court emphasized that caste cannot be the sole or dominant criterion for determining social and educational backwardness. While caste can be a relevant factor, other factors like poverty, occupation, and living conditions should also be considered. The court invalidated the State's classification of backward classes into "backward" and "more backward" categories, stating that such sub-classification was not justified under Article 15(4). The Balaji case established important principles for reservation policies in India, emphasizing that while reservations are permissible to uplift disadvantaged groups, they must be within reasonable limits, based on a comprehensive understanding of backwardness, and should not disproportionately impact the rights of other communities.

State of M.P. V. kumari Nivedita Jain and ors¹⁴ the Supreme Court upheld the validity of an executive order of the Government of Madhya Pradesh completely relaxing the requirement of qualifying marks for applicants belonging to the Scheduled Castes and the Scheduled Tribes in the pre-medical test. The court said that even without any law to the contrary it is open for the government to impose such conditions which would make the reservation effective for the advancement of candidates belonging to such classes. The court held that the executive order completely relaxing the minimum qualifying marks was not violating the Regulation and Article 15 (4) of the Constitution.

INDRA SAWHNEY V UNION OF INDIA & ORS (KNOWN AS MANDAL COMMISSION CASE)¹⁵

In the year 1979, the then Prime Minister Shri Morarji Desai appointed the second Backward Classes Commission

¹¹ AIR 1981 SC. 1829

¹² (1951) SCR 525

¹³ AIR 1963 SC. 649

¹⁴ AIR 1981 SC 2045

¹⁵ AIR 1993 SC 477, 1992 Supp(3) SCC.217



under Article 340 of the Constitution. The Commission was headed by B.P. Mandal¹⁶ and its mandate was to investigate the status of socially and educationally backward classes in India. When the Commission finally submitted its report in 1980, it recommended a reservation of 27 percent in government jobs for these castes. The collapse of the Janata Party government complicated matters and the recommendations of the report could not be implemented. There wasn't much progress in this respect for several years until Janata Dal regained power in 1989 and present Prime Minister Shri B.P. Singh decided to implement the recommendations of the report and reserved 27 percent of the seats for socially backward classes.

QUESTIONS BEFORE THE COURT

Whether caste on its own constitutes a different class and whether economic criteria could by itself be the determinant of a class.

Whether Article 16(4) was an exception to Article 16(1) and is exhaustive in itself of the rights of reservation.¹⁷ Does Article 16(4) allow classification of 'Backward Classes' into Backward Classes and Most Backward Classes or permit classification among them based on economic or other considerations.

The advocates for the petitioners led by Nani Palkhiwala argued that reservation further provoked the evil of the caste system and this evil will hamper India's march towards being a welfare state. They further argued that if the reservation was continued it will replace standard with sub-standard and meritocracy with mediocrity. Petitioners also alleged that the Mandal report was in essence trying to rewrite the Constitution.

JUDGMENT OF THE COURT

Backward classes under Article 16(4) cannot be identified on the basis of economic criteria but the caste system also needs to be considered. Article 16(4) is not an exception to clause 1 but an instance of classification as envisaged by clause 1. Backward classes in article 16(4) were different from the socially and educationally backward mentioned in Article 15(4). The concept of a creamy layer was laid down and it was directed that such a creamy layer be excluded while identifying backward classes. Article 16(4) does allow the classification of backward classes into backward and more backward. Reservation shall not exceed 50 percent, moreover, reservation in promotions shall not be allowed. Any new disputes regarding criteria were to be raised in the Supreme Court only.

The creamy layer policy¹⁸ in India's reservation system refers to the exclusion of relatively advanced individuals within the Other Backward Classes (OBC) category from benefiting from reservation policies. This concept was developed to ensure that reservation benefits are directed towards those who are truly socially and educationally backward. The creamy layer is determined based on factors like income, social status, and parental employment, with an annual income threshold currently set at ₹8 lakhs for those not employed by the government. The creamy layer policy aims to prevent the benefits of reservation from being monopolized by a select few within the OBC category who have achieved social and economic mobility. It ensures that the reservation system achieves its intended purpose of uplifting the most disadvantaged sections of society.

After **Indra Sawhney case** A number of developments in the reservation have taken place after the Indra Sawhney case. The Parliament responded by enacting the 77th Amendment to the Constitution by adding clause [4A] to Article 16 in 1995,¹⁹ by virtue of which powers are conferred to the State to reserve seats in favour of SC & ST in promotions in Public Services if communities are not adequately represented in public employment. The Supreme Court upheld the validity of Article 16(4A) in **M. Nagaraj Vs Union of India 2006**,²⁰ and it has laid three requirements: First SC & ST should be socially and educationally backward. Second no adequate representation for SC and ST in public employment and third it shall not affect the over efficiency in the administration.

¹⁶ 7th chief minister of Bihar and Member of Parliament from state of Bihar

¹⁷ Constitution of India Act 1950

¹⁸ It is implemented by the supreme court judgment in case of *indra sawhney v union of India*

¹⁹ Constitutional 77th amendment Act 1995

²⁰ AIR 2007 SC 71



A number of state governments enacted the law in consequence of the 77th Amendment of the Constitution e.g., Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the posts in Civil Services of the State), 2017²¹ was enacted by the State of Karnataka, and Supreme Court upheld its validity in 2019.

B. K. Pavitra & ors. V. Union of India & ors.²² Karnataka Determination of Seniority of the Government Servants Promoted on the Basis of the Reservation Act, 2002 was held to be unconstitutional on the ground that the State had not undertaken to determine 'inadequacy of representation', 'backwardness' and the impact on overall efficiency before passing the law. It is also pertinent to mention here that the apex court has also said that, there is no fundamental right which inheres in an individual to claim reservation in promotions, in the recent judgment of **Mukesh Kumar V State of Uttarakhand**²³ which was pronounced in February 2020.

The court in the Indra Sawhney case tried to come up with a solution that is reasonable and strikes a fine balance between the society and rights of the backward classes. Removing economic criteria as the sole determinant of classification was also a step in the right direction as was the exclusion of the creamy layer who had already benefited enough from affirmative action. The Court ruling may have been considerate but subsequent amendments by successive governments to fiddle with the reservation criteria further established the fact that reservation above all had now well and truly become about vote-bank politics more than anything else.

In the almost three decades after this landmark ruling, the anti-reservation voices have started gathering momentum but the lawmakers should remind themselves of the duties the framers have given them through the means of the Constitution. The reservation phenomenon has certainly helped in uplifting the backward classes but there is a long way to go before all historical wrongs are set right.

E.P. Royappa v. State of Tamil Nadu²⁴

This case introduced the doctrine of arbitrariness, emphasizing that equality is antithetical to arbitrariness. The court held that Article 14 strikes at arbitrariness in state action, ensuring fairness and non-discrimination.

Maneka Gandhi v. Union of India²⁵

This case expanded the interpretation of Article 14 by linking it to Articles 19 (freedom of speech and expression) and 21 (right to life and personal liberty). The Supreme Court ruled that any law or executive action must be just, fair, and reasonable.

Naz Foundation v. Govt. of NCT of Delhi²⁶ The Delhi High Court decriminalized homosexuality, affirming that discrimination based on sexual orientation violates the right to equality.

Mohd. Ahmed Khan v. Shah Bano Begum,²⁷ Shah Bano Begum, a Muslim woman, was married to Mohammed Ahmed Khan. After being divorced by her husband, Shah Bano filed a petition for maintenance under Section 125 of the Criminal Procedure Code, 1973. The trial court granted her maintenance, but the order was challenged by Ahmed Khan on the grounds that, as a Muslim, he was only obliged to provide maintenance during the iddat period under Islamic personal law. The Supreme Court ruled in favour of Shah Bano Begum, affirming that she was entitled to maintenance under Section 125 of the CrPC beyond the iddat period. The Court held that personal laws must align with the statutory provisions of civil laws that provide for the welfare and protection of individuals. The judgment catalysed a broader debate on women's rights and religious personal laws in India. In response to the Shah Bano verdict, and to address the concerns raised by the Muslim community regarding the judgment's implications, Parliament enacted the Muslim Women (Protection of Rights on Divorce) Act, 1986. This legislation restricted the maintenance obligation to the iddat period, and provided for maintenance only if the divorced woman was not provided for by her former husband. It aimed to align the legal framework with personal law considerations.

²¹Act No. 21 of 2018

²²(2019) 16 SCC 129

²³AIR2020 SC 992

²⁴1974AIR 555

²⁵AIR 1978 597, 1978SCR (2) 621

²⁶Delhi High Court, 160 (2009) DLT 277

²⁷1985 AIR 945



Shayara Bano v. Union of India²⁸ this case resulted in the historic verdict striking down Triple Talaq (instant divorce in Islam) as unconstitutional. The Supreme Court ruled that the practice violated Article 14 by being arbitrary and discriminatory against women. The triple talaq case" refers to the legal battle in India surrounding the practice of "triple talaq," a form of divorce in Islam where a husband can divorce his wife by uttering "talaq" three times. In 2017, the Supreme Court of India declared this practice unconstitutional. Subsequently, the Muslim Women (Protection of Rights on Marriage) Act, 2019, was enacted, criminalizing triple talaq and making it punishable with imprisonment.

Indian Young lawyers v State of Kerla 2006²⁹ The "Indian Young Lawyers Association vs. State of Kerala" case, commonly known as the Sabarimala case, involved a legal challenge to the traditional exclusion of women of menstruating age (10-50 years) from the Sabarimala Temple in Kerala. The Supreme Court, in a 4:1 majority decision, ultimately ruled that this restriction was unconstitutional, violating the fundamental rights to equality and freedom of religion.

Navtej Singh Johar v. Union of India³⁰

This landmark judgment decriminalized Section 377 of the IPC, which criminalized homosexuality. The Supreme Court held that the law was discriminatory and violated the right to equality, ensuring dignity and rights for the LGBTQ community.

State of Panjab v Davinder Singh 2024³¹ The seven-judge Constitution Bench upheld states' power to create sub-classifications within the Scheduled Castes and Scheduled Tribe (SC/ST) categories in a 6:1 majority. The bench overturned that judgment in **E.V. Chennaiah v. State of A.P. (2004)**,³² which had barred sub-classifications as "tinkering with" the Presidential List of 1950 under Article 341. The majority, led by former Chief Justice D.Y. Chandrachud reasoned that the Constitution promoted "a more substantive reading of the equality provision ensuring that the benefits trickle down to those who need it the most." Since there was disparity within various SC/ST groups, sub-classification was permissible to ensure equality, not sameness. However, the bench clarified that any law creating sub-classification had to be based on empirical data and was subject to judicial review. Sub-classification, they said, was "one of the means to achieve substantive equality and the underlying idea is that "two persons who are not similarly situated cannot be treated alike." Justice Bela Trivedi dissented. She held that sub-classifications would violate the principle of equality enshrined under Article 14 of the Constitution. The "removal of inequalities or remedy to remove inequalities cannot be permitted at the cost of violation of the specific provision of the Constitution," she said. After the judgment, states like Haryana and Telangana announced their intention to create sub-classifications for backward SC/ST groups within their states after the Court's judgement.

Tinku v State of Haryana (2024),³³ the court limited the contours of equality to illegality. The petitioner had sought a compassionate job appointment years after the death of his father, a Haryana police constable. According to the state's 1999 policy, applications seeking compassionate recruitment must be filed within three years of the employee's death. The petitioner argued that he was eligible for the job even though more than three years had lapsed because other delayed applications were granted. The Court rejected the petition, ruling that prior illegal appointments did not create a lawful entitlement. The right to equality, the Court said, was "a concept clothed in positivity based on law" and can only be invoked to enforce claims with legal sanctity, not to justify unlawful benefits.

Gaurav kumar v union of India (2024)³⁴ a Division Bench examined the issue of unequal enrolment fees charged by different State Bar Councils. The petitioner, a law graduate, had challenged the exorbitant enrolment fees, ranging from ₹10,000 to ₹50,000, levied by various SBCs—far above the legislated cap of ₹600 for general

²⁸ AIR2017 SC 4609

²⁹ (2018) 10 SCC 689

³⁰ AIR 2018 SC 4321

³¹ 2024SCC Online SC 1860

³² 2005 (1)SCC 394

³³ C.A. No.-008540-008540 - 2024 (Jul 23, 2024)

³⁴ SC2024



candidates and ₹100 for SC/ST candidates prescribed by the Advocates Act, 1961. For aspiring lawyers from marginalised and economically weaker sections, these fees act as barriers. The Court held that unequal fees were unconstitutional, and violated the right to equality under Article 14. The Court also held irregular enrolment fees as violating the right to practice a profession of choice under Article 19(1)(g). “Dignity is crucial to substantive equality”, the Court said, while reasoning that the enrolment fee structure disproportionately affects those with limited financial resources and was, therefore, “contrary to the principle of substantive equality.”

In Sukanya shantha v Union of India (2024),³⁵ the top court struck down provisions in various State prison manuals that legitimised caste-based discrimination in prisons. The Court held that such practices subverted the principle of substantive equality enshrined in the Constitution and violated Articles 14, 15, 17, 21 and 23. “Rules that discriminate among individual prisoners on the basis of their caste specifically or indirectly by referring to proxies of caste identity are volatile of Article 14 on account of invalid classification and subversion of substantive equality,” the bench held. In particular, the Court criticised practices like separating the “scavenger class,” assigning menial jobs to certain castes and deeming Denitrified Tribes as habitual offenders. The judges held that such practices perpetuated the ideas rooted in untouchability and systemic discrimination, hindering rehabilitation and violating the dignity of prisoners.

The judiciary often takes a proactive role in promoting social justice by addressing issues of caste-based discrimination, gender inequality, and religious bias. The courts have interpreted equality not just in a legal sense, but also as a tool to ensure fairness in access to resources, opportunities, and social benefits. The judiciary has also upheld special provisions like reservations for Scheduled Castes (SC), Scheduled Tribes (ST), and Other Backward Classes (OBC) under Article 15 and Article 16. These provisions are aimed at ensuring that disadvantaged communities are uplifted, and the judiciary has played a key role in ensuring that such measures do not violate the equality principle.

CONCLUSION

In summary, the judiciary in India plays an essential role in not just interpreting the law, but also in upholding equality in its true spirit. It strikes a balance between individual rights and social justice, ensuring that the principle of equality is maintained without compromising the need for affirmative action where necessary. The judiciary in India has been a vigilant guardian of the Right to Equality, ensuring that constitutional promises are translated into real protections for every citizen. Through judicial review, progressive interpretation of fundamental rights, and landmark judgments, the courts have played a transformative role in addressing discrimination and upholding the principles of fairness, justice, and equal treatment. By balancing individual rights with the needs of social justice—such as in the case of reservations and affirmative action—the judiciary has reinforced that equality is not just formal but also substantive. In essence, the judiciary stands as a cornerstone in the effort to build an inclusive and egalitarian society in India.

³⁵ 2024 INSC 753. Case No. Writ Petition No. 1404 of 2023. Jurisdiction. Civil Original Jurisdiction.