

BLOCK 2 EQUALITY

Concept of equality and its various dimensions are covered in Block 2. Equality has been established in two forms in modern societies. The first is equality of democratic citizenship and the other is equality of conditions. Equality of democratic citizenship is mainly associated with an equal enjoyment of basic rights like the right to vote, right to freedom etc. However, to compensate for social differences among various individuals, there is a need for substantive equality so that there is equality of condition as well. In today's context, we could say that equality has been accepted as a very important principle of organizing human life; however, intense battles rage about *where* and *how* should equality be applied? A much more contentious field is the application of the principle of equality to the distribution of *wealth* and *income* in society. Hence, discussions and debates around equality are a very important part of political theory. Unit 4 in this block is *Equality before Law and Equality of Opportunity*. Unit 5 is titled *Equality: Sameness and Difference*. Unit 6 is *Differential Treatment and Equality of Outcome* covering the important issue of affirmative action.



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UNIT 4: EQUALITY BEFORE LAW AND EQUALITY OF OPPORTUNITY*

Structure

- 4.0 Objectives
- 4.1 Introduction
- 4.2 Different Types of Equality
 - 4.2.1 Formal Equality
 - 4.2.2 Equality of Opportunity
 - 4.2.3 Equality of Outcomes
- 4.3 Some Basic Principles of Equality
- 4.4 Some Arguments against Equality
- 4.5 Liberal Justification of Inequality
- 4.6 Equality and Feminism
- 4.7 Equality and Liberty
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- 4.10 Answers to Check Your Progress Exercises

4.0 OBJECTIVES

The main objective of this unit is to understand the meaning of equality and address some of the important theoretical issues connected with this concept. As you go through this unit, you should be able to:

- Explain the concept of equality
- Discuss some of the basic principles of equality
- Explain formal equality, equality of opportunity and equality of outcomes
- Examine some of the anti-egalitarian positions
- Discuss the liberal justification of inequality and finally
- Evaluate the relationship between equality and liberty

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4.1 INTRODUCTION

The idea of equality seems to be the central concern of modern politics and political thought. Hierarchy in society based on birth was accepted as natural. For a very long time, this is no longer the case. Infact, modern political thinking starts from the assumption that all human beings are equal. The *French Revolution in 1789* and the *American Civil War* remain two very historically significant landmarks in the articulation of the idea of democracy, equality and freedom. Medieval hierarchies were challenged by one, and the other drew attention to inequalities based on race. However, the acceptance of the idea of equality was not easy. Writing in 1931, *R.H. Tawney* lamented what he described as the ‘Religion of Inequality’ in British society. What seems to have bothered him was not just the existence of inequalities in society, but its acceptance as natural and inevitable. In the post-second world war period, many changes have taken place and the idea of equality has gained a much wider currency. The upsurge in the *colonized world* added another significant dimension to the debate on equality, as has the *women’s movement*.

In today’s context, we could say that equality has been accepted as a very important principle of organizing human life; however, intense battles rage about *where* and *how* should equality be applied? A much more contentious field is the application of the principle of equality to the distribution of *wealth* and *income* in society. In this context, it would be useful to mention that in recent years there has been a serious *resurgence* of *anti-egalitarian* thinking reinforced by the growing popularity of that school of political economy which argues that egalitarian measures stifle market efficiency and in the long run, make everyone worse off. Egalitarians are, thus, required to sharpen their arguments in response to a new set of challenges; they usually set to do this by establishing clearly the fact that they are not demanding absolute equality and hence, uniformity is not a part of their scheme at all. On the contrary, what they seek to preserve, is variety.

4.2 DIFFERENT TYPES OF EQUALITY

4.2.1 Formal Equality

John Locke, the English philosopher remains one of the most eloquent defenders of the idea of equality based on the natural equality of men. (Needless to add that in Locke’s scheme of affairs, women did not feature at all!) Kant reinforced this position further by talking about universality and equality as a consequence of this universal humanity. Thus, formal equality came to imply that by virtue of their common humanity, all individuals should be treated equally.

The most important expression of this idea is the principle of *legal* equality or equality before the law. All individuals should be treated equally by

the law irrespective of their caste, race, colour, gender, religion, social background and so on. While this was a welcome step in the fight against special privileges based on race, gender, social background and other similar criterion, it remained a very *limited* notion on its own. This principle ignores the fact that handicaps imposed by caste, gender or social background could be so overwhelming that individuals would *not* be able to benefit from the formal equality that the law bestows upon all individuals.

In this context, it would be appropriate to note that it was this inadequacy that led Marx to examine this question in his essay 'On the Jewish Question'. He contended that formal equality while being a significant step forward could not bring about human emancipation. While the *market* did free people from the barriers imposed by social rank and other similar categories, it did nevertheless create differences based on *class* that were upheld by the existence of *private property*. This implied that individuals had starkly different market values and hence, Marxists describe formal equality in this context as *market equality*, which is little more than a façade to disguise the deeply unequal nature of society.

Today, egalitarians have moved away from the notion that all human beings are created equally and hence, must have equal rights; this is so because of the fact that in most of the important aspects, human beings are not equal. Therefore, today, the word equality is used more in a *prescriptive* rather than a descriptive sense; those policies would be backed that promote the ideal of equality without having to depend upon some descriptive properties of human beings.

Check Your Progress Exercise 1

Note: i) Use the space given below for your answer.

ii) Check your answer with that given at the end of the unit.

1) What was it that disturbed R.H. Tawney about the British society?

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2) What is the basic philosophy guiding the principle of formal equality?

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4.2.2 Equality of Opportunity

Understood very simply, equality of opportunity means the removal of *all* obstacles that prevent personal self-development. It means that careers should be open to talent and promotions should be based on abilities. Status, family connections, social background and other similar factors must not be allowed to intervene.

Equality of opportunity is an extremely attractive idea that is concerned with what is described as the *starting point* in life. The implication is that equality requires that all individuals begin from a *level playing field*. However, the consequences of this need not be egalitarian at all. Precisely because everyone started equally, *unequal* outcomes are acceptable and legitimized. This inequality would then be explained in terms of differing natural talents, ability to work hard or even luck.

Constructed like this, it seems that equality of opportunity provides an equal opportunity to compete in a system that remains *hierarchical*. If so, then it does not appear to be a substantially egalitarian principle. Equality of opportunity, thus, points to an inegalitarian society, albeit based on the exalted ideal of *merit*. This idea rests itself on the distinction between nature and convention, the argument being that distinctions that emerge on the basis of different natural qualities like talents, skills, hard work and so on are morally defensible. However, differences that emerge out of conventions or *socially created* differences like poverty, homelessness are not. The fact, however, is that it is a specific societal predilection that makes a natural distinction like beauty or intelligence a relevant ground for making distinctions in society. Thus, we see that the distinction between nature and convention is *not* as clear-cut as egalitarians imply.

Equality of opportunity is institutionalized through the acceptance of keeping careers *open* to talents, providing fair equal opportunity, and the many variations on the principle of positive discrimination. All of these work to make the system of inequality seem reasonable and acceptable. The underlying assumption is that so long as the competition has been *fair*, advantage itself is beyond criticism. There is no doubt that a system such as this would create people, who concentrate only on their talents and individual attributes. This robs them of any feeling of community with their people, because they can only think in terms of competing. Perhaps, the only community this can create is a community of the *successful* on the one hand, and a community of the *unsuccessful* on the other which blames itself for its supposed failure. Yet another problem with equality of opportunity is that it seeks to create an artificial *disjunction* between the successes and failures of one *generation* and the *next*.

has argued that people being very different have different aspirations and goals and any system that treats them equally actually results in inequality. The drive for equality, it is argued, is at the cost of individual liberty. It is argued that the imposition of socialist egalitarian measures undermines the dignity and self-respect of the individual and the inherent paternalism accompanying such measures denies the ability of the individual to be a rational chooser.

4.3 SOME BASIC PRINCIPLES OF EQUALITY

Egalitarians do not believe that everybody is same or should be the same. It is not a simple *mathematical* idea. It would help us to put down some of the core principles that egalitarians would be committed to. The first commitment is to the idea that every individual has a right to the satisfaction of his or her *basic* needs and a society characterised by wide disparities in the standard of living is not acceptable to them. They are committed to a society where living conditions are not just bearable, but are capable of providing a satisfying and fulfilling life to all.

Another significant principle is that of *equal respect*, which implies opposition to any form of degrading treatment or circumstances; ideally, a society based on fellow feeling. An egalitarian position would oppose huge *differences* in income and wealth not only between individuals, but even between *nations*. It would also involve democratic control of the economy and the workplace, apart from the possibility of dignified, interesting and safe work for everyone. Political equality, needless to add, is *not* just the right to vote or to stand for any public office, but a wide network of civil rights and a democratic participation in all aspects of life so that individuals are enabled to control and shape their lives in a more significant way.

Sexual, racial, ethnic and religious equality are some of the other components of the complex idea of equality. Needless to add that one cannot aim at a totally exhaustive list of equalities, and in that lies the reforming potential of the concept of equality.

4.4 SOME ARGUMENTS AGAINST EQUALITY

Equality, it is argued, is a concept that is *untenable* in reality because society and social processes are likened to a *competition* in which not everyone can end up being a winner. We have already noted such objections earlier in the context of our discussion on equality of outcomes. What one could say in response is that this objection emerges out of a specific construction of the nature of society and the individual.

In recent times, the names of *Hayek*, *Friedman* and *Nozick* are associated with the position that holds egalitarianism as a threat to freedom. Nozick is particularly critical of liberals like John Rawls and Dworkin for their commitment to welfare provisions in order to enlarge equality of opportunity. In response to those who say that inequality in society undermines self-respect, libertarians like Nozick argue that on the contrary, it is egalitarianism that robs people of their self-respect. Nozick claims that inegalitarian societies show *more* respect for individuals by acknowledging the distinctiveness of each individual and the difference between individuals. Since an egalitarian

society would be bereft of any differences based on power, rank, income or social status, there would be no basis for self-esteem, because self-esteem is based on criteria that *differentiate* people.

A very strong objection comes from those who believe that any attempt to establish equality results in the strengthening of the state and thereby, weakens individual freedom. This is at the heart of the well known question in western political theory of the relationship between equality and liberty which we will address a little later.

Check Your Progress Exercise 3

- Note:** i) Use the space given below for your answer.
ii) Check your answer with that given at the end of the unit.
- 1) Explain how according to Nozick an egalitarian society robs people of their self-respect.

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4.5 LIBERAL JUSTIFICATION OF INEQUALITY

Liberals reject sex, race, or class as the relevant criteria for treating people differently, but they do believe that it is *just* and *fair* if inequalities are earned and deserved by virtue of their different *desert* or *merit*. Thus, liberal theory holds stubbornly that so long as inequality can be justified on the basis of rewards or desert for special qualities and abilities or special contribution to society, it is *acceptable*. One cannot help note here that what is meritorious, special or a contribution to the society are all *circumscribed* by the *specificities* of the society in question. Moreover, it is very difficult to *isolate* the worth of an individual's contribution, and if one takes *back* after contributing, then is one really contributing anything at all? This whole position seems to *contradict* the *basic* liberal position that all individuals have equal worth and respect and reduces people to a bundle of talents and abilities. In recent times, however, *modern liberals* such as *Rawls* and *Dworkin* have *rejected* merit and desert as a criteria for justifying inequality. Instead, they advocate an equality of *consideration* based on the *equal moral* worth of all individuals, irrespective of their differing individual talents or skills. They base this equality on the idea that all human beings are equally endowed with the ability to make choices and formulate life plans. Rawls, for

Equality

instance, *rejects* as morally arbitrary the distribution of rewards according to ability or effort, for differences in abilities and skills he contends, are simply *facts of nature* and no one is to gain or suffer because of the presence or an absence of these skills or abilities. Hence, he advocates the treatment of these natural abilities as a *social asset* so that the 'basic structure of society can be arranged so that these contingencies work to the good of the least fortunate'.

The so called *Difference Principle* that Rawls enunciates, is to his mind, the best principle for ensuring that natural assets do not lead to unfair advantages. The Justice principle requires that social and economic inequalities should be so arranged that they are both a) to the greatest benefit of the least advantaged and b) attached to offices and positions open to all under conditions of fair equality of opportunity. This, thus, *unlike* the *traditional* liberal rights is a much wider understanding of equality. Unequal rewards are justified not on the basis of differing abilities, but as *incentives* so that they benefit the least advantaged. Dworkin also expresses displeasure with the traditional liberal ideas on equality and accepts the need for some redistribution and welfare policies.

Macpherson has criticised Rawlsian equality on the grounds that it assumes the inevitability of institutionalized inequalities between classes. In doing this, Rawls ignores the fact that class based inequalities create unequal power relationships among individuals of different classes and would thus, impinge on other aspects of equality.

4.6 EQUALITY AND FEMINISM

Feminists try to look at the issue of equality through the gender lens. An important book in this respect is *Susan Okin's Justice, Gender and the Family* (1980). It has been argued that equal opportunities legislation or redistributive justice through the extension of equality principles to different areas, in essence, *cannot* create equality as these rules and principles operate in an environment which is already contaminated by the inequality between the *sexes*: an inequality brought about by social practices. Many of these practices are not directly discriminatory toward women, but their overall effect is to reinforce inequality and give it a veneer of legitimacy. Thus, although the law may not formally differentiate between the sexes, it is the case that women tend to get segregated into *particular occupations* and *married women* who have careers are especially disadvantaged in a gender-biased society.

Feminists point out that the position of women's substantive inequality – their weak voice in familial decision making, their duty of child rearing and the subsequent withdrawal from the labour market – has nothing to do with natural and spontaneous operation of choices, but because roles are *socially constructed*. However, at the same time, it would perhaps be resented even by the feminists, if the state is involved, especially in family life, for eradicating gender differentiation. It is, perhaps, easier, to be aware of gender inequality and to locate into the social practices and the socially structured roles, but it is difficult to go for a remedial measure. Unless the women themselves become aware of their inequality, of their subordinate

role in family, and come forward to re-orient the social constructions, nothing concrete with respect to gender equality can be achieved.

4.7 EQUALITY AND LIBERTY

It is often claimed that liberty and equality are *anti-thetical*, and that this conflict therefore is *irreconcilable*. *De Tocqueville* saw equality as posing a likely danger to liberty, fearing as he did mass conformity and the tyranny of the majority. Friedman, Nozick and Hayek are some of the more recent names associated with this position. What such a position does is to *deliberately* pose a contradiction between liberty and equality by suggesting that attempts to establish equality immediately imply coercion and loss of liberty. They imply that since individuals are different in terms of their skills and abilities, differences in their lives are bound to exist, and thus there is bound to be a natural tendency towards inequality. Any attempt to correct this will have to be accompanied by authoritarian suppression and hence, loss of liberty. Here, there is a deliberate attempt to equate equality with *uniformity*; an egalitarian society is not a uniform society. It would be a society where every individual given her or his individual and differing talents could enjoy an equally worthwhile and satisfying life. Those who argue that equality and liberty are irreconcilable begin with a *specific* understanding of liberty; what has been described as the 'negative conception' of liberty. In fact, they contend that the positive concept of liberty is not liberty at all, but something masquerading as liberty. The negative picture of liberty sees liberty as the absence of deliberate interference in an individual's life. On the contrary, they see freedom as the availability and the ability to make choices that are meaningful and effective. Such an understanding of liberty would immediately link it to the issues of access to structures of social and institutional power, fulfilment of material and economic requirements, and of course, the possession of education and knowledge.

Therefore, egalitarians hold that equality in terms of social power, economic wealth and education is essential to ensure that everyone has an equally worthwhile and satisfying life. In doing this, egalitarians are pursuing equality stifled by social and institutional structures of power. Liberty is seriously hampered by the wide disparities of wealth. Education, by opening our minds and educating us with various skills is undoubtedly a liberating factor. Therefore, any inequality in access to any of these elements would, it can be argued, limit the individual's ability to lead a meaningful and satisfying life, which to the egalitarians is the essence of the idea of liberty. Egalitarians are arguing that human beings do *not* become free simply by being left *alone*. They argue that power, wealth and education are the basic sources of liberty and a society that cannot ensure equality in these aspects cannot be a free society. Thus, we see that liberty and equality far from being anti-thetical are *actually* not just compatible, but dependent on one other. Most of the twentieth century was a time when equality barely stood in need of justification. It was seen as the central principle around which nations and societies were to organise themselves. However, towards the close of this century, there is a serious intellectual as well as a political attempt to present equality as morally undesirable. The inviolable nature

of the right to property and the essentially plural nature of society, the anti-egalitarians claim, would be severely threatened by a pursuit of equality.

4.8 LET US SUM UP

In this unit, we tried to examine what the concept of equality means. It is particularly significant given the fact that we live in a society that is battling against various kinds of inequalities. Equality in its most restricted sense is formal equality, which subscribes to the notion of universal humanity of all human beings. Equality of opportunity, which we saw, can be used to ultimately justify inequality. Equality of outcomes stretches the meaning of the term equality. We also took stock of the modern liberal defense of equality and how it justifies inequality, only if it works to the maximum advantage of the worst off in society. We also took note of the feminist critique of equality. Finally, we examined the debate about the relationship between equality and liberty, and saw that a negative conception of liberty makes the two concepts appear conflictual.

4.9 REFERENCES

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4.10 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) Existence of inequality in British society and its acceptance as natural and inevitable
- 2) By virtue of their common humanity, all individuals should be treated equal irrespective of differences

Check Your Progress Exercise 2

- 1) Removal of all obstacles that prevent self-development

Check Your Progress Exercise 3

- 1) Since an egalitarian society would be bereft of any differences, there would be no basis for self-esteem as it is based on criteria that differentiate people from one another

UNIT 5: EQUALITY: SAMENESS AND DIFFERENCE*

Structure

- 5.0 Objectives
- 5.1 Introduction
- 5.2 Types of Equality
 - 5.2.1 Equality of Treatment
 - 5.2.1.1 Formal Equality
 - 5.2.1.2 Substantive Equality
 - 5.2.2 Equality of Outcome
 - 5.2.3 Equality of Resources
 - 5.2.4 Equality of Responsibility
 - 5.2.5 Equality of Dignity
 - 5.2.6 Equality of Capability
- 5.3 Equality and the Indian Constitution
- 5.4 Sameness and Difference
- 5.5 Let Us Sum Up
- 5.6 References
- 5.7 Answers to Check Your Progress Exercises

5.0 OBJECTIVES

In this unit, you will explore the idea of equality and its need in society. After studying this unit, you should be able to:

- Explain the meaning of equality
- Discuss basic theories of equality
- Understand its various types and
- Examine the debates on sameness and difference

5.1 INTRODUCTION

Equality as a term simply means being equal; however, it is a complex political and philosophical concept that helps us understand and improve the world around us. Equality is defined as the state of being equal, especially

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Equality

in status, rights, or opportunities, as per the Oxford dictionary, and it is through these mechanisms that it tackles its opposite and a historically existing social problem in the world today – inequality. ‘Equality’ denotes correlation between a group of different objects, persons, processes or circumstances that have the same qualities in at least one respect, but not all. In this way, it is different from the idea of being identical or of sameness. The concept of equality does, not, thus assume that things or people are exactly the same or clones of each other, but that they are similar. It can be used in both descriptive and prescriptive senses, depending on the common standard against which two objects are compared and their similarity/difference is judged. In its descriptive usage, the common standard is itself descriptive i.e., it describes a measurable quantity, such as two people being equally tall. On the other hand, prescriptive equality involves using a prescriptive common standard wherein, based on a predetermined norm or rule, such as men and women should have equal rights before law. The prescriptive standard in this form has both a descriptive component and a normative component. In our example, men and women form the descriptive component as they describe to whom our predetermined rule would apply, and the predetermined rule – in our case, ‘law’ forms the normative component, that prescribes the way men and women should be treated before it. The descriptive aspect helps define who would fall under this norm such as that of the law. It is this prescriptive concept of equality that has formed the backbone of modern social justice systems either via law or other political movements that tend to challenge existing laws. In this conceptualization, equality is a notion via which social justice may be achieved in some respect among multiple groups of people. If we have a set of descriptions that can help us identify unequal groups of people, then by applying the normative component of prescriptive equality, justice maybe achieved via specific kinds of treatment as per need. Thus, justice may be strived for by either ensuring identical treatment, or through differential treatment that may help achieve this normative state of equality wherever in society it is not found to be so. This can be further explained through looking at some early theories of equality.

Equality, as we know in modern times, is derived predominantly from the concepts of equality and justice, as discussed by Aristotle in his writings *Nicomachean Ethics*, where he uses the Greek word *isos* to denote equality. He explains equality in terms of fairness as necessary for achieving justice as a moral virtue in society. W. Von Layden in his book *Aristotle on Equality and Justice: His Political Argument*, explains Aristotle’s idea of equality as based on the idea of difference between people living under the rule of a particular state, in which, he claims that equality could not have become an issue if people had truly been equal. According to him, discrimination should be replaced by equal or just treatment through legal means, public measure, or revolutionary action. This conception introduces equality as a value to be strived for by the people and the state, where justice can occur

only between people who are fundamentally equal as citizens. Aristotle as an early thinker gave a limited conception of equality, confined to the concept of citizenship under a state and thus, its applicability was limited to a narrow class of people.

Other scholars such as Thomas Hobbes, John Locke, John Stuart Mill, and Karl Marx have expanded on the concept. Hobbes imagines the human free of political, legal, and moral constraint existing in the state of nature. This situation, according to him, would be that of mutual fear due to natural equality. With this, the claim is that no one is subservient or prominent in strength to not be vulnerable to other. Locke argued on natural and Biblical grounds that human beings are born free and equal with natural rights to life and liberty. In his work, *The Second Treatise*, Locke focused on the need for social contract to protect equal rights and so that people may escape conflicts over property. He believed material inequalities to be inevitable as men have voluntarily given money value. According to Jean- Jacques Rousseau, Locke had failed to resolve the conflict in the way of civic peace and individual liberty that arose because of such unequal distribution. This could be solved by equal redistribution of public holding amongst all citizens under the contract. It was this idea that propelled the French revolution and its following pillars of liberty, equality, and fraternity. Authors such as Marx and Mill who were informed by the French revolution have focused on aspects of economic inequality. While Mill believed that sharing of property would lead to a loss of initiative, Marx believed in the opposite. Karl Marx and Engels in the *Communist Manifesto* focused on the historical process of economic inequality between the worker and the property- owning class. Their understanding of equality was based on ending the differentiation between social classes on the basis of ownership and exploitation that came from it. The modern conception of equality, especially within the law is based on various axis of inequality, such as class, race, gender, and caste in India, and forms the basis of social justice.

These important theories on the concept of equality are, thus, connected by varying themes of social justice. In the larger fold of prescriptive use of equality, one may find further subdivisions of the concept based on what the intentions of a particular strand of social justice system is. This is explained in detail in the next section.

Check Your Progress Exercise 1

- Note:** i) Use the space given below for your answer.
ii) See the end of the unit for tips for your answer.

1) What do you understand by the term equality?

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2) Explain some theories of equality.

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5.2 TYPES OF EQUALITY

There are four broad axes for equality - civil, social, political, and economic, which can be seen at levels at which equality has to be achieved. They entail that all citizens are subjected to the same law (civil), have equal access to political participation and authority (political) and enjoy equal opportunities (social). Economic equality implied removal of poverty and enjoyment of wealth by all. There are, however, different ways to achieve equality on different axes, which can be elaborated through various types of equality. There are two ways to categorize equality; while the first categorization is based on the principles of equality, the second is based on the subject or ‘what’ of equality.

5.2.1. Equality of Treatment

Based on the principles of equality, also called the Equality of Treatment, there are two types- Formal and Substantive. Formal or popularly known as legal equality assumes that one law should apply to all, without regard to individual differences. It echoes the Aristotelian logic, that likes should be treated alike. Even though it aims to treat people the same to produce equality, it fails because it does not recognize diversity. Substantive equality, on the other hand, recognizes differences and can be seen as equity. It looks at the causes of disadvantages caused by differences, and aims to improve it through equal opportunity, and dignity. This categorization has been part of a large feminist debate. While formal equality has helped women get equal wage for doing the same work as their male colleagues, it does not recognize their double burden such as the housework. Further, natural processes such as childbirth are often given as reasons for not hiring women workers as they would work for lesser time than men. In such a scenario, the formal equality method can be used behind logic of unequal work, unequal pay and opportunity since it does not recognize biological and gender differences. On the other hand, substantive equality would recognize these differences, but at the same time, maintain equality of dignity and opportunity, and therefore treat men and women the same.

5.2.2. Equality of Outcome

Equality of results focuses on the treatment to produce equality. It recognizes the need for unequal treatment to achieve equal results and fairer distribution of benefits. An example of this is affirmative action within the Indian constitution that allows for reservations. The problem with equality of results is that it does not fundamentally examine or change the conditions that lead to discrimination. Therefore, the use of this strategy or framework has to be accompanied by structural change to tackle the root of discrimination.

5.2.3. Equality of Opportunity

This framework recognizes that equal treatment alone does not overcome the structural discrimination a person has faced. According to this view, equal opportunities would help tackle institutional discrimination. Through the use of the metaphor of a race, it is said, that people should have the same starting point in the race, so that they can be judged fairly on individual merit, without consideration of other identity factors of race, gender, etc. While focusing on individual talent, this approach also underlines the importance of choice. It is to say, once there are equal opportunities, a person can make choices about their life. Bernard Williams in his work '*The Idea of Equality*' differentiated between procedural and substantive equality of opportunity. Here, procedural opportunity meant removal of obstacles in the path of disadvantaged to take that opportunity; however that does not ensure that they will actually be able to do so. The second kind called substantive equality of opportunity helps through measures that ensure that all citizens have the means to fulfil the criterion for a particular opportunity.

5.2.4. Equality of Responsibility

According to equality of responsibility, a person should be held accountable for his own actions, and thus places it in the centre of the autonomy of an individual. Proponents of this view believe that while unfair distribution of resources and goods is fair if it is caused by the person's personal decision, it is unfair when it arises out of conditions not within the person's control. Inequalities that are not the result of a person's choice are unjust and should be, therefore, compensated. Some examples of these are natural attributes, or social attributes, i.e., socio- economic disadvantage a person has because of their class, race, or caste.

5.2.5. Equality of Dignity

This approach is based on individual dignity and worth of a person as the basis of equal rights. Unjust treatment towards a person is seen as harmful and offensive to an individual's fundamental human dignity. While an interesting formulation, especially when equal treatment is denied on the basis of lack of rationality, dignity as an intrinsic human characteristic can counter that, it does not entail equality. Unless it is stated and recognized that everyone has *equal* moral worth and not simply moral worth, inequality cannot be tackled through this conceptualization.

5.2.6. Equality of Capabilities

This approach has been popularized by Amartya Sen in his study of equality. Amartya Sen proposes that distribution should be based on various things a person is able to do or be during their lives. To evaluate a person's well-being, the focus has to be on a person's capability for maintaining that condition such as enough nourishment, health. According to Sen, 'capabilities' then are a measure of equality of capabilities human beings enjoy to lead their lives. This approach, however, has been criticized as being too open - ended and loaded with the difficulty of measuring well-being as a marker for equality.

Check Your Progress Exercise 2

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) What do you understand by Equality of Treatment? Explain with example.

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2) What is the difference between equality of opportunity and outcome?

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5.3 EQUALITY AND THE INDIAN CONSTITUTION

The Indian constitution endorses equality as one of its defining principles and a fundamental right of the citizens of the country. Under Article 14 of the Indian constitution, "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India." The phrase 'equal protection of the laws' has been taken from 14th Amendment of the constitution of the United States of America. While it entails that all citizens are equal before law, it also allows for protection of laws. In other words, laws which go against the grain of the fundamental rights can be declared unconstitutional. It is further supported by other parts of the constitution such as Article 15 which prohibits discrimination on the basis OF religion, caste, sex, or place of birth, Article 16 which focuses on

equal opportunity in public employment, and Article 17 which abolished untouchability. According to the Supreme Court of India's judgement In the case of E. P. Royappa vs. State of Tamil Nadu & Anr, "equality and arbitrariness are sworn enemies" and thus, the State cannot be arbitrary in treatment towards individuals coming from different sections of society, in such matters as public employment. Thus, equality was held to be antithetical to arbitrariness in state action. Furthermore in 1976, a seven judge Bench of the Supreme Court in the case of State of Kerala v. N.M. Thomas, (1976) 2 SCC 310 held that Article 14, 15, and 16 were equality rights and sought to achieve real equality. It was held that section 15 (4), and 16 (4) which allowed for special provisions and reservations for the marginalized were not exceptions to 15 (1) and 16 (1), and, in fact, flow from them to bring to reality the goal of equality. This was concretized with another judgment in 1992 which upheld this principle. The constitution, therefore, aims to provide formal, as well as absolute equality. This would also necessitate actions by the state for the removal of inequality and promote the sentiment of unity in diversity among the citizens of India. This is even more prominently evident in Article 25 of our Constitution that promotes equality of religious practices to guarantee the religious freedom of diverse communities in India.

A more recent instance of reinstatement of constitutional equality was the reading down of section 377 of the Indian Penal Code. The colonial law criminalized same sex relationship between citizens as unnatural and therefore, punishable, until recently. On 6th September 2018, the Supreme Court of India repealed section 377 for consenting adults in the country. The section was seen as a violation of the various fundamental rights such as that of equality and was, thus, regarded as unconstitutional. It is via this judgement that equality was considered the antithesis of discrimination in the constitutional framework. Thus, when it comes to the constitutional meanings attached to the concept of equality, it is seen that the meanings are subject to change through time. However, the core principle of unity in diversity for the citizens of India is upheld. An important point to understand in the context of the Constitution and the concept of equality is that there is a difference between Constitutional ends and means. The State administers constitutional means to address social inequality that has been historically present via affirmative action. The concept of equality before law is addressed at either minimising or eliminating inequalities in terms of income, status, access to the facilities and opportunities made possible by the state. It also implies securing adequate means of livelihood and promoting educational and economic interests of weaker sections of society. This specifically includes the protection of Scheduled Castes and Scheduled Tribes from social injustice and all forms of exploitation. Equality, a positive right, postulates not merely legal equality but also real equality. Thus in this vein, reservations and other special provisions extended by the state from time to time, for the protection of minority rights is meant to address social inequality that already exists, and protect those who are unequally placed in

society. They are, thus, the means of achieving equality at a certain point of time in the future and are not ends in themselves.

Check Your Progress Exercise 3

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Mention the rights in the Indian Constitution which ensure equality?

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5.4 SAMENESS AND DIFFERENCE

As we have seen in earlier sections, the concerns of equality are intimately tied to the idea of sameness and difference; however, the debate between sameness and difference has complicated our understanding of equality. Feminists and race theorists have been the ones who have largely contributed to the debate and expanded scholarship on the issue of sameness and difference. As we also discussed earlier, the Constitution of India guarantees equality as an antithesis of discrimination, and by doing so, also recognises the sameness vs. difference principle. The principle of treating likes alike, and unlikes-unalike on which equality within the justice system works is one that depends on classification of the people, and was first derived by Aristotle. Most western legal frameworks on equality are derived from this principle and so was our Constitution’s Article 14. Read along with Article 15 of the Constitution that prohibits discrimination on the grounds of religion, race, caste, sex, place of birth or any of them, Article 14 reflects how firstly the state is supposed to treat different kinds of citizens in the same way, and not treat different kinds of people differently when it comes to a common standard of treatment. However, for purposes of social justice, people who are classified similar are treated the same, and those classified differently are treated differently, as in the case of reservations for disadvantaged sections of society. Furthermore, Gurpreet Mahajan shows us in her work *Negotiating Cultural Diversity and Minority Rights in India*, how multi-level federalism is also practiced in India within the Constitutional fold to uphold equality of minorities and in order to grapple with identity-based ethnic conflict. Breaking away from contemporary theories of multiculturalism that recommend self-governance of communities as a way to address such conflicts, Mahajan recommends multi-level federations or sub-federations instead as a more effective means to address minority rights in culturally and territorially diverse regions. She also expands on the challenging

issue of addressing linguistic equality in India where hundreds of different languages are spoken by various communities. Her central recommendation on this front is that emerging democracies such as India need to better address linguistic diversity with respect, recognition and equal opportunities to enter what she calls the 'public arena'. Even though modern theories of equality as written down in our Constitution may have arisen in the West, we find that they have been heavily informed by specific experiences of the non-West.

In the Aristotelian conception of equality, affirmative action which treats unlikes-unalike on the basis of difference does not appear. Neither was it able to solve the hierarchical relations between men and women. When the concept of equality was being imagined in the West, women and men were seen as being different on the basis of their sex, and hence, the Aristotelian dictum could justify the different treatment met out to them. Women were not simply seen as different but also inferior, which justified them having no voting rights. When men and women do different jobs, they are simply paid different on the unlikes being treated unlike model, even when the job values are comparable. Further, the social sanctions and causes for women and men taking up different jobs are not taken. Under this theory of equality then, if someone is different i.e. if someone is coming from a different group, they can not only be treated unequally but even less. The Suffragist Movement (movement for women's voting rights) that was launched in the USA in the early twentieth century had argued against differentiation in the legal system on the basis of sex, hence focusing on legal rights through the ambit of sameness. However, even the suffragist movement failed to address voting rights for black men and women, and thus equality was envisioned only within the racial identity of whiteness. Much of western feminism in its formative stages has suffered from a narrow lens of White and European people. In the later twentieth century, black feminist and lawyer Kimberle Crenshaw theorised 'intersectional feminism' to address social justice and equality in terms of resisting marginalisation experienced by people who belong to the intersections of multiple axes of power and social hierarchies, such as class, race, gender, etc. Thus, a black woman living in the USA would not only experience marginalisation on account of her being black, but also on account of her being a woman and vice-versa. When applied to the Indian context, intersectional feminism, caste becomes a prominent category of stratification along with other more universally present axes of marginalisation such as class or gender.

Joan W. Scott in her work, *Deconstructing Equality versus Difference* writes that a central focus on sameness makes it appear as it is the only ground on which equality can be demanded, even when feminist political ideas have long been based on difference as well. With the rise of postmodernism in feminist theorising, pluralities and diversities have taken precedence over unities and universals, in other words, 'difference' takes precedence over 'sameness'.

Equality

Particularly in American feminist theorisation and politics, ‘equality-versus-difference’ has become a catchphrase and guiding principle. Scott argues that the concepts of ‘equality’, ‘sameness’ or ‘difference’ were all past inventions that feminists tended to borrow uncritically into their theory and politics. These concepts were not based on realities that feminists primarily want to fight for/against and thus, she argues for a thorough revision of all of these concepts. She claims that ‘equality’, as described in the political theory of rights that lies behind the claims of excluded groups for justice, means the ignoring of differences between individuals for a particular purpose or in a particular context. At the historical root of the meaning of equality lies a ‘negative’; that is, it aims at eliminating a particular set of differences in a particular time and place, and not all differences. This presupposes different sets of people as ‘equivalent’ for a specific and articulated socio-political purpose, but importantly, doesn’t consider them ‘identical’. Thus, in this sense, equality can be considered the antithesis of inequivalence and for purposes of democratic or constitutional citizenship, equivalence has been measured or standardized differently in different times, whether in terms of rights or freedom or treatment of people. Scott furthermore argues that equality in its political meaning includes and depends on an acknowledgment of the existence of difference. The sameness articulated within this fold of equality is applied through an ‘identity’, such as ‘women’, or when combined with an intersectional understanding, an identity can be ‘black women’. These identities are formed with an underlying concept of both sameness, which defines what it means to be a ‘woman’ or a ‘black woman’, and of difference, wherein it is claimed how they are different from the identities that are higher up in corresponding social hierarchies, such as ‘men’. Thus, in terms of political strategy, equality has undergone radical changes through time with ‘difference’ becoming a stronger component of contemporary feminist debates.

Check Your Progress Exercise 4

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) How did the feminists understand the debate on sameness and difference?

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5.5 LET US SUM UP

Equality has been one of the most difficult concepts to grasp within society. Despite various theories given in the past, and in the present, the problem

of inequality deeply pervades Western as well as Indian society. Scholars from the developing world have pushed theorists to recognize global inequalities such as between the developed and developing countries and the discriminations arising from those. Understanding the idea of equality, therefore, helps grapple with the concept of inequality that surrounds one person. It is also important to understand equality as an essential and enduring component of social justice that has formed the backbone of all democracies in the world. The changing meanings of equality as arrived from feminist debates in history are crucial to understand how it is applied in contemporary political assertions.

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5.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) Your answer should include the following

Equality

- Oxford dictionary definition
 - Descriptive and prescriptive use of equality
 - Some theoretical perspectives on equality
- 2) Your answer should include
- Aristotle's concept
 - Hobbes' and Locke's natural conceptualization
 - Rousseau's idea
 - Marx's conception

Check Your Progress Exercise 2

- 1) Your answer should highlight
- It is based on principles of equality
 - Example from workplace
- 2) Your answer should include
- While one focuses at end result, the other focuses at the start
 - Equality of outcome tackles discrimination better than equality of opportunity

Check Your Progress Exercise 3

- 1) Your answer should include
- Articles 14 – 17 of Indian Constitution
 - How they came to be known as equality rights through court judgements

Check Your Progress Exercise 4

- 1) Your answer should include
- History of feminist theoretical understandings of 'equality'
 - The meanings of 'sameness' and 'difference' as applied politically through time
 - Examples from Indian Constitution

UNIT 6: DIFFERENTIAL TREATMENT AND EQUALITY OF OUTCOMES

(IMPORTANT ISSUE: AFFIRMATIVE ACTION)*

Structure

- 6.0 Objectives
- 6.1 Introduction
 - 6.1.1 What is Differential Treatment?
- 6.2 Why Differential Treatment?
 - 6.2.1 Need for Social Justice
 - 6.2.2 Social and Political Inclusion of the Weaker and Vulnerable Sections
- 6.3 Equality of Outcomes
 - 6.3.1 What is Equality of Outcome?
 - 6.3.2 Prevailing Views on Equality of Outcome
- 6.4 Differential Treatment and Equality of Outcome
 - 6.4.1 Accommodating Differential Treatment and Equality of Outcome
 - 6.4.2 Does Differential Treatment Lead to Equality of Outcome?
- 6.5 Let Us Sum Up
- 6.6 References
- 6.7 Answers to Check Your Progress Exercises

6.0 OBJECTIVES

In this unit, you will read about the idea of differential treatment and equality of outcomes. After studying this unit, you should be able to:

- Explain the meaning of differential treatment
- Understand the concept of equality of outcomes
- Comprehend the relationship between differential treatment and equality of outcomes

6.1 INTRODUCTION

The idea of equality is one of the most important features of modern political thought. When classical and medieval thinkers considered hierarchy to be

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Equality

natural or inevitable, it was the modern political thinkers that initiated the assumption that all human beings are equal. In modern times, the concept of equality has been widely accepted as indispensable for human life. The ideal of equality does not mean that all material goods, the national income or all educational opportunities available in society should be equally distributed among all members of society. On the other hand, it implies that individuals with differences in physical, mental faculties, energies and skills should be given equal opportunities for the development of their personal qualities. The issue of equality, however, incites intense debate when it is applied to the distribution of wealth or income in society, what is commonly referred to as 'social justice'. Questions of the restoration of equality and balance in society dominated political debates where some insisted that an equal or at least more equal distribution of rewards and benefits are desirable. Others argued that justice demands that natural differences among humankind should be reflected in the way society treats them. There has also been a resurgence of anti-egalitarian views amongst a school of thought which argues that egalitarian measures reduce market efficiency which in the long run upsets the economic wellbeing of all. Thus, the champions of egalitarianism have come up with the counter that while absolute equality is not desirable, the onus of efforts to preserve and accommodate variety should be on the state. In other words, the idea of equality denotes the establishment of legal, political and social conditions where people having different physical traits, sex, talents, skills, attributes are able to enjoy equally worthwhile and satisfying lives. Equality, in other words, is not about blanket uniformity, but rather it is about 'levelling' those conditions of social existence which are thought to be crucial to human well-being.

The principle of equality has assumed a number of forms and the most significant among them are formal equality, equality of opportunity and equality of outcomes. Formal equality denotes that all human beings are possessors of equal rights, and thus, by virtue of their common humanity, all individuals should be treated equally. The most important manifestation of this idea is the principle of legal equality or equality before law which implies that all individuals irrespective of their caste, creed, religion, sex, social background and capabilities should be treated equally. While the intent of formal equality was noble, it failed to take into account that the individuals are never free from the evil shadows of caste, gender and social background to benefit from the law bestowed by formal equality.

Equality of outcome implies equal distribution of rewards such as income, wealth and other social goods irrespective of their social and family backgrounds or talents and efforts. This principle of equality is rigorously supported by hardcore egalitarians. However, critics point out that as men differ in their talents and efforts and their social backgrounds, equal distribution of rewards disregarding these differences would kill the

incentive to work hard amongst the more competent and industrious and thus, would lead to injustice and stagnation.

The idea of equality of opportunity means the removal of all obstacles that prevent personal development and self-realisation. It advocates that all individuals should have an equal start to life or equal life chances. It argues that the state should provide equal opportunities to all its citizens. And if one chooses to use the opportunity, his achievement would depend on natural talents, ability to work hard or even luck. In other words, if the state ensures that everyone started equally, unequal outcomes are acceptable and legitimised on the grounds of talent or effort. Thus, equality of opportunity seeks to reduce the impact of inequalities attached to social-cultural and economic backgrounds, but agrees to provide differential rewards according to their talents, skills and efforts.

One particularly difficult issue which the principle of equal opportunities leads to is that of reverse or 'positive' discrimination which will be discussed below.

6.1.1 What is Differential Treatment?

The term "differential treatment" refers to policy measures that are consciously designed by the state to discriminate among the citizens by certain specified criteria to protect the interests of the weakest among them. It is a policy through which special privileges are granted to underprivileged sections of society who in the past or the present have been the victim of social, caste or racial discrimination. These are affirmative action programs undertaken by the state to bring equity and justice among all sections of society. This principle of protective discrimination is also known as reservation, reverse discrimination, positive/affirmative action, preferential treatment etc. These provisions together form the framework for the analysis of the concept of social justice in various egalitarian societies. Its objective is to reduce the persistent discrimination or inequality in society by giving preferential treatment to the backward marginalized sections in the distribution of valued social goods and opportunities. The main agenda for introducing differential treatment is to protect the weaker sections of society who have been socially and historically neglected and exploited and to free the disadvantaged sections of the society from the hegemony of the powerful and resourceful by way of creating ample opportunities for their participation.

6.2 WHY DIFFERENTIAL TREATMENT?

Ideally, the state regards all citizens as equal in the eyes of the law and so they shall be treated equally by it. However, a modern liberal state has recognized the necessity and avenue for differentiated treatment among its citizens by their socio-economic backgrounds. If a significant part of the population of a nation is plagued by discriminatory social practices

practiced in the past, and such an affliction has hampered their right to a dignified life and primary access to state resources, then that part of the population is considered fit for being treated preferentially (Scheduled Castes and Scheduled Tribes in India and Blacks in the USA). To reform and regenerate the society from social evils, certain definite and bold measures for the eradication of these social maladies had become the need of the hour. Democracy becomes meaningless without transforming vertical inequality into horizontal inequality. To remedy the situation and compensate for the past injustices perpetrated against the disadvantaged groups, preferential treatment in favor of these groups is sought to be provided by the state agencies. This system of preferential treatment is known as “protective discrimination”.or ‘differential treatment’.

6.2.1 Need for Social Justice

Our society has always been full of inequalities and injustices. Since ages, societies existed as a stratified, hierarchical society where a particular segment of society faced discriminatory social practices leading them to live their lives without the realization of basic human rights. Because of the widespread prevalence of racial or class disparities, their education, wages, living conditions, social status was dictated by the whims of upper strata of society, reducing them to destitution. The economic backwardness brought social humiliation, thus pushing them to the lower strata of society that consequently deprived them even of the dignity of life. In a society fragmented by caste, racial, caste or gender divisions, dominant sections occupying the major portion of resources pulled the levers of power. It facilitated them to enforce their whips, detrimental to the interests of lower segments of society. For centuries, this practice existed where the weak and the vulnerable had to serve the ruling classes without being able to voice their grievances and without any mechanism to address them. This inhuman and barbaric practice continued for centuries which created a wide gap between power holding upper strata of the population and the toiling class was at the receiving end of such discrimination. Accordingly, the judiciaries across the world have provided various institutional avenues for social empowerment of the weaker sections of society. One significant measure among them is the policy of protective discrimination which involves the deliberate act of preferential treatment by the state in favor of particular groups of people by race, religion, gender and even spatial location.

6.2.2 Social and Political Inclusion of the Weaker and Vulnerable Sections

The practice of protective discrimination or differential treatment was introduced to uplift the conditions of the deprived sections to bring them at par with the mainstream of society. This policy of affirmative action is also called reverse discrimination because it guarantees differential treatment to certain deprived sections just as overtly as it was used or discriminated

against them in the past. Taking into consideration the economic and social reality of our societies, the idea of affirmative action holds ground for delivery of social justice and the consequent full realisation of democracy. It is important to remember that the concepts of justice and equality are not opposing ones as the claims of justice and equality do not clash with one another. The practice of providing preferential treatment to those who were discriminated and denied basic facilities for centuries does not in any sense stand against the principles of justice. Rather, such preferential treatment essentially seeks to build the properties and environment of justice. Justice consists in rightful allocation of benefits and burdens. Equality would be meaningful only when it is accompanied by a sense of justice. The exercise of granting and providing social justice to the needy ones leads to the strengthening of the claims of equality as it strives to bring unequals hitherto on parity with today's equals.

Thus, through the principle of differential treatment, egalitarian societies attempts social and political inclusion of the weaker and deprived sections.

Check Your Progress Exercise 1

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Why is differential treatment necessary?

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6.3 EQUALITY OF OUTCOMES

Equality of outcomes is a substantive conception of equality which attempts to provide substance to the concept of equality. While formal equality dictates behavior through the application of rules and procedures consistently, equality of outcomes, on the other hand, seeks to inject a principle of morality into the application of equality. Equality of outcome stands on the idea that the principle of equal treatment sometimes requires different treatment for certain grounds of disadvantage. The social philosophy behind this conception of equality is an egalitarian understanding of social justice and good life. This concept of equality finds expression through a range

of policies and legal mechanisms in various jurisdictions of the world in the form of reverse discrimination, positive discrimination and affirmative action.

6.3.1 What is Equality of Outcome?

As has been mentioned above, the idea of equality of outcome is the most radical and controversial face of egalitarianism. Equality of outcome implies equal distribution of rewards such as income, wealth and other social goods irrespective of the social and family backgrounds or talents and efforts. The idea of equality of outcome necessitates the introduction of far more dramatic measures by the state for necessary changes to be visible in society. This emphasis on 'outcomes' rather than 'opportunities' shifts attention away from the starting point of life to its end results. In other words, equality of outcome emphasises equal distribution of rewards among all sections of society and does not take into account the starting points, efforts, skill and talent of individuals. As such, the idea of equality of outcome not only differs from formal equality and equality of opportunity but could also possibly contradict them. The demand for equal outcomes is mostly associated with the idea of material equality, social circumstances and also wages. Many see equality of outcome as a prerequisite for securing individual liberty as a certain level of material prosperity is essential to lead a worthwhile life.

6.3.2 Prevailing Views on Equality of Outcome

The idea of equality of income is widely accepted by the socialists, the communists and the anarchists who view that it is the most vital form of equality since without it other forms of equality are futile. On the other hand, conservatives and liberals believe such measures to be immoral or unnatural.

For instance, Rousseau was of the view that the only natural inequality among men is that which results from differences in physical strength. The emancipation of new forms of inequality due to private property is not in accordance with the law of nature, and thus, should be contested. He belonged to a school of thought, which recognized the significance of material inequality in society and at the same time sought for individual liberty and economic incentives. Although, a keen advocate of private property, he nevertheless recognized the dangers of social inequality; one who viewed that 'no citizen shall be rich enough to buy another and none so poor as to be forced to sell himself'. One could also draw similarities between the idea of equality of outcome with the modern idea of redistribution of wealth from the rich to the poor which emphasises more on reducing social inequalities rather than on achieving any abstract goal of social equality. Thus, when modern social democrats advocate equality, they generally refer to the modest idea of 'distributive' equality rather than any radical goal of 'absolute' equality. Although they recognize the importance of material

equality, they do acknowledge the significance of unequal measures like incentives to work.

Fundamental socialists, on the other hand, root for a far higher degree of social equality. Marx, for instance, criticised the very idea of equality and instead termed it as a 'bourgeois' right to inequality. He clearly distinguished between the idea of equal or more equal property ownership with his own goal of common ownership of productive resources. According to him, only when one advocates for the abolition of all forms of private property, however equally distributed it be, the idea of 'absolute' social equality could be achieved. Marx envisions a communist, classless society where human emancipation is possible only when people are free from economic inequalities.

Thus, a clear parallel could be drawn between Rousseau and Marx when they both talked about the possibility of exploitation of the poor by the richer sections because of economic inequalities. As Rousseau laments how the poor get duped by the promises made by the rich to secure the consent of the former to institute legitimate power, Marx also shows how the ruling class produces a legitimating ideology to perpetuate the system of economic exploitation. Thus the advocates of both moderate and radical forms of equality of income agree that it is the most vital form of equality, since without it other forms of equality remain futile. They argue that equal legal and civil rights make no sense to citizens who do not have a job or a roof over their head. Critics, however point out that the pursuit of equality of outcome leads to stagnation, injustice and ultimately tyranny.

6.4 DIFFERENTIAL TREATMENT AND EQUALITY OF OUTCOME

Talking about equality, we do not talk of legal equality only in the sense of equality of opportunity, but also 'equality of conditions' and equality of outcome or results. Since the son of a doctor and the son of a labourer do not get equal opportunities, justice as fairness demands that the social environment must be changed if equal start for everyone is to be provided. However, for that, we need collective consent and decision to give favored treatment to the deprived and marginalized sections of society. In addition to that, 'equality before law' and equal protection of law' mandate that everyone should be treated alike. Although by legal equality, equality of opportunity has been achieved, the eradication or reduction of economic and social inequalities prevalent in society is yet to be accomplished. The hegemony of the richer sections in gaining access to the resources of the state for centuries has created an extremely asymmetrical society that affects the compositeness of the whole society, since there are wide disparities in political as well as the social system. In this situation, the empowered and powerful sections of society more often wish to continue with the status quo and may resist any change in the existing discriminatory distributive

pattern. The deprived and marginalized ones, on the other hand, may want a complete revolution of the social system and aspire for drastic measures by the state to ameliorate their social and economic position. Thus, both groups voice their demands and put pressure on the state agency to get them fulfilled which puts the state in a quandary.

6.4.1 Accommodating Differential Treatment and Equality of Outcome

The US has been one of the pioneers in introducing this policy which was associated with 'affirmative action' on race issues that discriminated in favor of disadvantaged groups in the hope of compensating for past injustices. Such a policy has been justified in terms of equal opportunities. It was recognized that when racial minorities, for example, are socially underprivileged, merely to grant them formal equality does not give them a meaningful opportunity to gain an education, pursue a career or enter political life. Thus, in the US, equality of outcomes policies have been adopted through quota systems within university admissions procedures. This was recognized, for instance, in the US Supreme Court case *Regents of the University of California v. Bakke* (1978), which upheld the principle of reverse discrimination in educational admissions. In this sense, reverse discrimination operates rather like the handicap system in golf to ensure fair and equal competition between unequal parties. Some argue that this application of the principle amounts to different but equal treatment and so conforms to the strictures of formal equality. Others, however, suggest that unequal treatment, albeit in an attempt to compensate for previous disadvantage, must of necessity violate the principle of equal rights.

The Constitution of Germany puts the onus of gender equality on the state. It states that "Men and women are equal. The state supports the effective realisation of equality of women and men and works towards abolishing present disadvantages." Similar provisions are found in the Greek constitution where it has been mentioned that "Adoption of positive measures for promoting equality between men and women does not constitute discrimination on the basis of sex. The State shall attend to the elimination of inequalities actually existing, especially to the detriment of women." Likewise, South Africa's constitution mandates the state to eliminate gender and racial discrimination and to take positive actions to ensure that the South African state reflects social diversity. The statement, "the need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed," is another example of the kinds of positive or affirmative actions that find expression in different egalitarian constitutions.

The Constitution of India made provisions for differential treatment in favor of the Scheduled Castes and Scheduled Tribes (SCs & STs) which constituted about 23% of the then divided India's population. Apart from providing reservations in parliamentary seats, they were also given preference in the

form of quota in admission to schools and colleges, jobs in the public sector, and various other economic benefits for the overall development of this big chunk of population. The constitution guaranteed the fundamental right of equality of all citizens before the law, but it also categorically laid down that nothing in the constitution “shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes”. The state is empowered to take special measures for the betterment and welfare of disadvantaged sections of society. In other words, the policy of reservation or positive discrimination stands at least in the short run, as an integral part of the process of socio-economic change, integration and development of India. These provisions are contained in Articles 15 (4), 16 (4), 46 and 340. The above articles comprise the backbone of social justice measures in the form of protective discrimination and equality of outcome enshrined in the Constitution.

6.4.2 Does Differential Treatment Lead to Equality of Outcome?

Even though equality of starting points is often associated with equal accessibility, there is an important difference between the two. The idea of equal access has its origins from the principle of equality before the law. Equality of access makes way for equal access to all public services by individual merit and not on the basis of birth and inherited privileges. Thus, equal opportunities were understood as equality of access which formed the predominant liberal notion of equal opportunities in present times. But, equality of access to something for all on the basis of merit is one thing and ensuring a level playing field giving equal opportunities to everyone is another thing altogether. When two individuals who are different by nature are put together at the same starting point, it is necessary to create favorable conditions for the disadvantaged or disadvantage the advantaged. In other words, if equality is to be established between two unequal persons, artificial differences have to be created, so that position of the weaker and vulnerable ones comes at par with the privileged. In this way, inequality becomes a means of achieving equality as it attempts to correct the prior inequality.

This equality is, however, not equality of outcome. This idea of equality of opportunity ensures that everyone should have the same opportunity to become the best and that only the best ones obtain the social goods which are limited in supply. In most interpretations of equality of opportunities such as equality of starting points and equality of resources, the focus is not on equality as a specific value. Rather, it revolves around the idea of competition where the metaphor of race is linked with the circle of life. According to Cavanagh, two concepts of meritocracy come into play behind people’s obsession of seeing the process of education or seeking employment as a race. The first concept assumes that a competition is the only way for us to successfully recognize that someone deserves his or her success. The second concept of meritocracy does not see competition as

Equality

a means of enabling people to deserve their own success, but as a way of identifying an individual's natural talents. However, in neither of the two cases, the argument begins with a reference to equality. Rather, it starts with a reference to competition which is again anti-egalitarian as it does not emphasise the equality between people but promotes and recognises the differences between them. Thus, equality of opportunity does not bring about equal success and equal status, but only ensures fairness of the rules that regulate the efforts of obtaining them. The advocates of the liberal conception of equality of opportunity justify the unequal achievements, if they are the consequences of differences in the ability, will and desires of those engaged in competition. In this context, the idea of equal opportunities is explicitly perceived as being contrary to equality of outcomes. It should be remembered that equality of opportunity or more specifically 'differential treatment' is addressed here from the perspective of justice. Although justice is often defined as equality, inequality is not always unjust, and therefore, this principle favors people who are subject to discrimination so that they are treated fair and equitably. Thus, the liberal conception of equality of opportunity is typically associated either with equality of starting points or resources, but not with equality of outcome.

The issue of 'differential treatment' and 'equality of outcome' has been very emotive, divisive and contentious throughout its journey. There has been an outcry against such policies by classical liberalism which maintains that the distributive justice theory is not in conformity with liberal democratic thought as it imposes a high burden on the state and individual autonomy. However, the concept of equality of outcome and differential treatment makes an important contribution in combating institutions and processes that involve the worst cases of disadvantage and discrimination to different groups. However, it remains a politically charged interpretation of equality, under which competing economic, social and political interests must be addressed and balanced. Although there were continuing debates and challenges regarding the nature of implementation and relevance in present times, nevertheless, it can be said that such measures have contributed significantly to the expansion of democratic principles and inclusion of the poor and the backward classes into the political mainstream in the societies of different parts of the world.

Check Your Progress Exercise 2

Note: i) Use the space given below for your answer.

ii) See the end of the unit for tips for your answer.

1) Which articles of Indian Constitution deal with differential treatment?

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6.5 LET US SUM UP

After reading this unit, you must have come to know that various egalitarian societies make way for protective discrimination and equality of outcome. The reason behind the introduction of such protective discrimination is to protect and promote the interests of the weaker and deprived sections of society and provide them ample opportunities to make them empowered enough and bring them at par with the advantaged and privileged sections of society. However, the continuation of protective discrimination in the form of reservation system has given rise to debates regarding its utility and efficiency in the long run. Supporters of protective discrimination believe that the concepts of justice and equality are not opposing ones as the claims of justice and equality do not clash with one another. The practice of providing preferential treatment to those who were discriminated and denied of basic facilities for centuries does not in any sense stand against the principles of justice. Rather, such preferential treatment essentially seeks to build the properties and environment of justice. Justice consists in rightful allocation of benefits and burdens. Equality would be meaningful only when it is accompanied by a sense of justice. The exercise of granting and providing social justice to the needy ones leads to the strengthening of the claims of equality as it strives to bring unequals hitherto on parity with today's equals. On the other hand, those who are opposed to the idea of differential treatment and equality of outcome view that the idea of compensating for the wrongs carried out by their ancestors for decades without any definite indication of its culminating period presents an unfair situation. They are also of the view that the practice of protective discrimination essentially leads towards increasing of the functions and jurisdiction of the state which in turns restricts the liberties and rights of the people in general and of the empowered in particular.

Nevertheless, in spite of the criticisms regarding the continuation of differential treatment and provisions for equality of outcome, it cannot be denied that this policy of positive discrimination has gone a long way in expanding and strengthening democratic principles. It has also helped in developing an egalitarian society where the poor and deprived could also dream of thrashing the ladders of hierarchy and acquire the highest positions of honour and occupation. Thus protective discrimination does not violate the principle of fairness. Instead, it creates the condition and environment

Equality

of justice. In today's society, where discrimination on the basis of race and sex still exists in subtle or not so subtle ways, need for such affirmative action favoring the weak and the deprived is real. At the same time, the fruits of these provisions would be only realized when its benefits reach those who most deserve them, and for that, the resultant outcomes need to be scrutinized from time to time.

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6.7 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Check Your Progress Exercise 1

- 1) Your answer should highlight following points
 - To transform vertical inequality into horizontal inequality
 - To compensate for past injustices against weaker sections

Check Your Progress Exercise 2

- 1) Your answer should highlight Articles 15 (4), 16 (4), 46 and 340 of Indian Constitution