
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
- 4.8 Let Us Sum Up
- 4.9 References
- 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

*Prof. Krishna Menon Center for Gender Studies Ambedkar University of Delhi,
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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*.

Thus, it is seen that the *liberal* position on equality is based on equality of opportunity. This advocacy is contrary to any substantive idea of equality because these are opportunities which lead to unequal outcomes. This principle is, thus, *unconcerned* with the *outcomes* and is interested only in the *procedure*. This is entirely in keeping with the liberal idea that individuals are the basic unit of society and society must make it possible for individuals to satisfy their own interests.

Does this mean that egalitarians would ignore equality of opportunity? The answer is clearly *no*. However, they would work with a *wider* definition of equality of opportunity that would give everyone the means to develop their capacities in a satisfying and fulfilling way. An egalitarian society would not deny to some people the genuine opportunity to develop their capacities. The genuine egalitarian use of this opportunity would be to lead a worthwhile life. Since it is not possible to ensure that each individual leads a worthwhile life, what egalitarians would try for would be the creation of *social* conditions that give the opportunity to all individuals to lead worthwhile lives.

Check Your Progress Exercise 2

- 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 is equality of opportunity?

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4.2.3 Equality of Outcomes

Yet another articulation of the idea of equality would be in terms of the equality of outcomes, moving away from the starting point in life to look at the outcome. *Marx*, for instance, was of the opinion that any right to equality *circumscribed* by a bourgeois economy can only be partial. He, thus, argued for *absolute* social equality, possible only if private property was abolished. Defenders of equality of outcome believe that the guarantee of all other equalities would be inadequate so long as equality of outcome is *not* ensured.

Critics of equality of outcome point out that such a pursuit would only lead to stagnation, injustice and worse of all, *tyranny*. *Hayek*, for instance,

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