The Quest for Equality—Are We Going Too Far?

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Part I- Introduction:

If one were asked to name a concept which is most natural yet most sought after and most elusive, the answer in all probability would be equality. The more we know of equality the more it is left to be known. It is always there and we know it is there but still we neither understand nor experience it in its fullness. It is easy as also complex at the same time, so much so that even the intelligent minds often do not catch hold of this concept correctly.

There is a good deal of divergence in the opinion of scholars. Some say equality was there in the very beginning and was corrupted later; others feel that it gradually shaped itself in the human thinking, while still others feel that men are so unlike each other that there need be a born inequality in them inter se.

Its positioning in the scheme of things we value has also not been free from variance. Some placed it with justice, others with liberty and yet others with equity while some took it as a by product of either property or security.

The importance of equality can be measured from the fact that it has been described sometimes as one of the principal attributes of God and sometimes like the God Himself. Geeta, for example, informs us that those whose minds are in a state of equality are those whose minds are in a state of Brahma, and that the one who sees the immortal residing equally well in all the mortals is the one who sees the reality.

There is no aspect of human life where equality can not be applied, and this makes the realization of this value all the more difficult. However, it is not easily understandable why there is such a gap between preaching and practice, thoughts and actions, and the literature and the law of the times; because the slavery and untouchability got institutionalized despite the rhetoric that 'all men are created equal' or 'God dwells in all the beings' etc. Because any such rhetoric appears to assume away the obvious fact that men are similar to, yet so different from each other.

When inter-personal differences are taken in to account realization of equality becomes still more unachievable. Thus there is a need to remind ourselves of the reality that all men are equal only in some respects and altogether unequal in others. Sweeping generalizations may be helpful in analysis of Equality and to some extent even its realization, but they may do more harm than good².

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² See Amartya Sen: "Both pragmatic shortcuts and grand rhetoric can be helpful for some purposes and altogether unhelpful and misleading for others", in his book 'Inequality Re-examined (Oxford University Press, New Delhi, 1999), p. 31.

Equality has a halo that is almost divine, and it crowns all the values we cherish. The quest for equality has always been there and always there it shall be. Every new combination of space and time explores a new dimension of or, alternately, adds a new dimension to this great value. As newer and newer developments in various walks of life shape up before the world, the demands of equality appear to be more complex, and, address the mankind more urgently.

Part II- Equality as a Value:

Values are the guiding elements of human conduct in the journey of the human race towards fulfilment. On the other hand values may also be looked upon as the ideals a society would like to achieve. A value system, empirically, is an aggregate of such 'leading lights' developed in, and practiced; and, cherished and longed for by a society on its way to development. Equality has always been a value a society would like to esteem, and hence a component of each value system.

II. I. Values and Value System:

The word value is the past participle of the verb *valoir* in Old French that comes from the Latin verb *valere* meaning (to) be (of) worth³. Valueless, accordingly, means worthless. The Sanskrit word *mulya*⁴ comes from the word *mool* meaning root; and thus signifies that which is at the root (of anything).

Thus, etymologically, a value is one that lies at the root (of something) and is (therefore) of immense worth in the scheme of things considered e. g. religion, society, human beings, life, ethics, politics etc and, accordingly, they derive their names, religious values, social values, human values, values of life, ethical values, and political values.

Diversity of the fields of human action and endeavour, therefore, leads to multiplicity of values in a given society. These values, when viewed in totality, may be said to form a system of their own, viz. value system; and the life of a society will be seen deriving its vitality from this system in its forward journey.

When values change there has already taken place a change in the way we look at things and, hence the way we value things. This induces in the ultimate sense a change in our conceptual world view leading to that phenomenon we term 'paradigm shift'

Some values which are the product of the thinking of a particular epoch do vanish with the epochal change; while others get eclipsed for sometime and reappear after the 'adverse phase' (if one could use the term) is over. Contrary to these, there are certain values that never lose their basal position and continue to remain a source of inspiration in the particular field, for one and all. These, we may call universal values.

³ See The Concise Oxford Dictionary of Current English, Seventh Edition 1982, at p. 1187.

⁴ See Vrihat Hindi Kosh, (Jnanmandal Limited, Varanasi), p. 912.

Equality as a value may be termed as a universal value not in the sense that it always existed in its fullness but that it always commanded a height in every value system, even ones wherein it was slightly looked down upon. The quest for equality is almost eternal, and it has always prompted man to fight regimes which patronized inequality.

II. II. Equality and Indian Value System:

The Indian thinkers have suggested four values that give meaning to one's life: religious/moral (dharma⁵), sexual/entertainment (kama⁶), economic (artha⁷) and spiritual (moksha⁸) commonly known as purushartha chatushtaya. The diversity in the approaches of philosophers is seen at its best here as some like Charvak⁹ give credence to only artha and kama, there are those like Vyas and Manu who lay prominence to only the first three (trivarga¹⁰) because they feel that the fourth one, that is, moksha shall automatically follow once these three are properly observed; but for some only the artha is all important as it shelters all the values.

The three, that is, dharma, artha and kama are but the means to the end,

⁵ In the Karna Parva of Mahabharata dharma has been described thus: "Dharma sustains the society, dharma maintains the social order, and dharma ensures the well being and progress of humanity. Dharma is surely that which fulfils these objectives." (Chapter 69, Verse 58). On the other hand Manu tells us that 'non-violence, truthfulness, not acquiring illegitimate wealth, purity, and control of senses' are the five elements of dharma (X/163).

⁶ In the literal sense kama is the sexual desire while in the generic sense kama stands for any desire. However, only those desires which are conformable to dharma are the subject matter of kama as purushartha. Under this value system called purushartha chatushtaya, kama enjoys a very lofty place when it is in accordance with dharma. Nothing can express the importance of kama more clearly than this statement of the Lord Krishna: "within the mortal beings, I am that kama which is not contrary to dharma."

⁷ There is the great caution from Manu: "Kama and artha must be rejected if contrary to dharma" (IV/176).

⁸ To get the moksha or salvation is to unite with the God that frees one from the cycle of life and birth. Lord Krishna declares: "Once one goes there, there is no coming back. That is my abode of the highest order."

⁹ A philosopher with material bent of mind; he is as careless as anything when he declares: "While you live, live with pleasure; and enjoy the life irrespective of the liabilities created as a result of such living. Where is the chance of return of this mortal body once it is turned to ashes?"

¹⁰ Vyas enlightens us in the vana parva of Mahabharata thus: "It becomes the virtuous ones to embrace dharma, artha and kama when the time is the most opportune for the same." On the other hand Manu advises: "To achieve welfare and happiness some declare dharma and artha are good. Others declare that artha and kama are better. Still others declare that dharma is the best. There are also persons who declare artha alone secures happiness. But the correct view is that the aggregate of dharma, artha and kama (trivarga) secures welfare and happiness." (II/224).

that is moksha which is the greatest of all the other three values and has been termed as param purushartha. With the salvation the soul unites to the Brahma and becomes the Brahma itself. The moksha alone liberates a man from worldly bondage. It is thus that the first three have been termed as relative value while the fourth is called the absolute value¹¹.

Indian law givers have classified all men in to four categories called varnas: Brahman, Kshatriya, Vaishya and Shudra according to their nature (guna) and functions (karma)¹².This was a liberal and dynamic system which, it seems, degenerated later in to a rigid and orthodox one giving rise to social evils like untouchability. Likewise they suggested four ashramas viz. brahmacharya, grihastha, vanprashtha and sanyas. Not only this, there are also sufficient guidelines on what a king should or should not do. The proper function of the king, says Vyas, is to rule according to dharma and not to enjoy the luxuries of life¹³.

And equality is there in all this. Just as the mother earth gives equal support, says Manu, to all the living beings, a king should give support to all without any discrimination¹⁴. In what may be taken to be the extreme application of equality, Narad advises that the king should afford protection to compacts of associations of believers in Vedas as also of disbelievers in Vedas just as he protects the fort and his territory¹⁵.

Geeta which epitomizes the Vedic knowledge has the highest praise for the equality. Yoga which means the union of the soul with the Brahma is the state of mind where a man receives the pleasure and pain, friends and foes, victory or failure, and benefit or loss with equanimity. He is yogi. Such persons have won over the world in their lifetime whose minds dwell in equality. The scholarly persons, says Geeta, see all of them with equanimity: a Brahman who is enriched with knowledge and humility, the cow (that is sacred animals), the elephant (that is the big animals), the dog (that is the small and insignificant ones), and the scavenger (which implies the ones doing meanly jobs). This is so because the God dwells everywhere.

II. III. Equality under the Indian Constitution:

Under the Constitution of India an effort has been made to make equality a fundamental right in the true sense of the term.

Article 14 guarantees equality in the widest possible terms by ensuring equality before law and equal protection of laws. Other Articles attempt to make

¹¹ See Bharteeya Neetishastra by Dr Diwakar Pathak, published by Hindi Medium Enforcement Directorate, New Delhi, at p. 77.

¹² In Geeta Lord Krishna reveals that He has created four varnas according to the divisions of guna and karma; and teaches Arjuna thus: "Know me, the Imperishable as the doer and un-doer of this."

¹³ See Mahabharata, Shantiparva (Chapter 90, Verse 3).

¹⁴ Manu: IX/311.

¹⁵ Narad: as quoted in Dharmakosha at p.870.

the generic statement more specific and declare that there shall be made no discrimination on grounds of place of birth etc (Article 15); that equal opportunity shall be given to all in government employment(Article 16); that untouchability is abolished and, practice of untouchability in any form shall be an offence; and, that conferment of titles(barring degrees and medals given as a mark of distinction in academic, military, and such other fields as are not essentially related to hereditary honours and titles) is abolished.

To ensure that equality is realized as a social value for all sections of society suitable amendments have been made to concerned articles from time to time. The Indian judiciary has put the equality at the highest possible pedestal by observing that it is the founding faith of our Constitution¹⁶. 'In fact, the concept of non-arbitrariness and reasonableness (a paraphrase for equality-author) pervades the entire constitution' said the apex court¹⁷. Not only this, the Court also upheld the reservation to Other Backward Classes in government jobs for the sake of realizing the goal of overall social equality¹⁸.

Part III- Disturbing Trends of Equality:

III. I. Equality v. Social Justice:

As against Ehering who favoured the sacrifice of an interest on the altar of a superior interest, Roscoe Pound suggested that law-maker should try to satisfy maximum interests of society, and to sacrifice the minimum; just like an engineer who tries to utilize the maximum raw material available with least friction and wastage. This philosophy of social engineering was practised first in his country, America, in respect of Blacks; and then in India in respect of SCs-STs followed by OBCs. India thus ushered into what many termed 'reservation era'.

This avatar of equality as a social value promoting social justice was soon transformed in to a political and, of late, electoral value. As a result the government appears all out to search for new fields for application, and newer ways and means for implementation of reservations. As for the political parties and leaders, they seem to try to outsmart each other with their innovation in this fertile area. In an age marked by corruption and criminalization, there is a dearth of values and issues before our leaders; and in such an atmosphere reservation mantra comes handy.

As for the real sovereign that is electorate it would have been unwise for him not to en-cash this desperation on the part of his representatives. Therefore, those who were not backward fifty years ago have discovered to their pleasure that they are really so. The politician is now busy not in any welfare measures but

¹⁶ See Maneka Gandhi v. Union of India (AIR1978 SC 597).

¹⁷ See Ajai hasia v. Khalid Mujib (AIR 1981 SC 487).

¹⁸ See Indra Sawhney v. Union of India (AIR 1993 SC 4770).

in playing referee to this game of backwardness forgetting the prophetic precaution coming from a judge and a great approver of social justice:

"To lend immortality to the reservation policy is to defeat its raison d'être; to politicise this provision for communal support and Party ends is to subvert the solemn undertaking of Article 16 (1)"¹⁹.

No sane person will disapprove of reservation being given to those who need it, but it is not justified on any counts that a person drawing salary of several lac rupees per annum derives benefits of reservation in a nation where about 300 million of his countrymen remain hunger stricken²⁰. The situation becomes more intriguing when one learns that government has no plans to conduct surveys and studies to gauge the effect of reservation on those who it was meant for, and to exclude those who no longer need it.

If this were not done sooner than later it would end up after, say, one hundred years or so in a society where there is a new forward class and a new backward class- that is, a society marked by inequality and in the need of another reservation policy!

Therefore it is high time the reservation givers and seekers sat coolly and gave a sincere thought to what they are doing in the name of equality.

III. II. Equality v. Gay Rights:

A demand which, though not new, has acquired a status in India on the lines of western nations, is the campaign by some non-governmental (social) organizations. These organizations term section 377, IPC (which makes un-natural offences like sodomy punishable) as a piece of draconian law in so far as, claim they, it denies the gay persons their 'right' to have physical relations with each other. This, according to them, being a denial of equal protection of laws and equality before laws both, is a flagrant violation of right to equality enshrined in the Constitution (Article 14).

It would not be out of place to mention here that this right is available to all persons-whether natural born or legal ones-which is yet another reason that baffles them as to why, despite this legal protection, the consenting gay persons are always

¹⁹ See Krishna Iyer J in *Akhil Bhartiya Soshit karmchari Sangh* Case (AIR 1986 SC 298) at p.306.

²⁰ The creamy layer theory evolved by the apex court in the famous Indra Sawhney case (AIR 1993 SC 477) too has proved to be of little help for two reasons: One, due to sheer tendency of more affluent OBCs to refrain from bringing true account of their incomes on record; and Two, the cut off income for creamy layer. The limit of income required to define the creamy layer has been enhanced from 1.5 lacs to 4.0 lacs and thence to 4.5 lacs per annum on the recommendations of the Backward Class Commission. Now, a person whose income is more than thirty five thousand rupees per month will be competing with hundreds of thousands of those hapless people who can barely make their both ends meet- the only rationale for this otherwise thoroughly irrational arrangement is that both these categories are covered under the present definition!

cursed to see the sword of law (which they claim is a draconian one) hanging over their heads.

While some governments have tried to come to terms with such developments, the countries like India are still in a state of indecision before the demands of these persons, for example, that the Section 377 of the Indian Penal Code that makes unnatural relations punishable be struck off the code-books²¹. A girl marrying a girl is no more a matter of shock or dismay even by Indian standards, because we hear such cases only too often.

Gay movement has acquired global character. Recently when the Lucknow police apprehended several gay persons on the charges of running a racket, the police action attracted strong condemnation from gay unions the world wide. Coming (or, living?) together of gays is permitted in America and, recently in Britain even as the former has turned down their demand for a constitutional amendment. India feels perturbed when the international organizations want her to support gay's rights etc under the garb of human rights²².

And, between the lines runs the question: should equality be stretched to such limits? Or, an even more serious one: Can we shut our eyes off this challenge? And if the decision of the Delhi High Court in *Naz Foundation Case*²³ is any indication, we possibly can not. Even as the matter is pending before the Supreme Court, there comes this news:

"Nineteen parents of lesbian, gay, bisexual and transgender people have come together in the Supreme Court to stop the State from criminalising their children. Their argument chiefly is they know their children the best" ²⁴.

This, if anything, does hint at a new trend in social thinking which favours that gay persons are treated at par with others. That the demand for equal treatment

²¹ Several states of America have allowed civil union of gays even as an organization, Human Rights Campaign, continues to demand an amendment to the federal constitution. Since December 2005 the UK government has allowed gay-marriages under Civil Participation Act, moving further than what it had permitted under Sexual Orientation Regulation Act 2003. In India organizations like Bombay Gays and Naz Foundation are fighting for the cause of lesbians, gays, bisexuals etc.

²² When some gay persons were arrested on January 03, 2006, by Lucknow police, it was condemned by a non governmental organization 'Human Rights Watch which wrote to the Prime Minister about what it termed as "shameful" harassment of gay men. The United Nations agency on AIDS, UN Aids, also condemned the arrests. For more details, see BBC News UK version at http://news.bbc.co.uk/1/hi/world/south_asia/ 4602068.stm.

²³ See, *Naz foundation vs. Government of NCT of Delhi and Others*, decided on 2 July, 2009 wherein the Court has ruled that the section 377 IPC, inter alia, violates the right to equality as envisaged under Article 14to the Constitution of India in so far as it puts the gay persons in a separate class and penalises their behaviour.

²⁴ See, the news story by Krishnadas Rajagopal entitled 'In defence of their gay children, 19 parents go to SC' published in the Indian Express, New Delhi on Feb 09 2011.

for such persons have come from their parents shows that this aspect of equality has rooted so deep in to our society than it can no more be simply wished away.

III. III. Equality and Cloning:

The application of science and technology to the biological world has brought about changes which are more alarming than pleasant. Cloning, a technique of asexual reproduction is one such phenomenon. Efforts for cloning man to create a cloned race altogether are particularly a matter of grave concern.

Since the coming in to existence of Dolly sheep about a decade ago the world was a helpless spectator of the claims and counter-claims by the scientists about their cloning charisma and the law on the point remained in a state of flux until TRIPs tried to evolve certain parameters for patenting etc of biotechnological inventions²⁵. Several nations of the world have banned the cloning of human beings as such but have allowed the biotechnological inventions which are not essentially biological²⁶.

Genetic engineering has emboldened the man to do things that disturb the state of nature. Japan's invention of genetically modified mouse that is able to see cat eye to eye is a harbinger of things to come²⁷.

Recent news in this regard was not less worrying either. The Guardian reported that Britain's Human Fertilization and Embryology Authority has offered 'year-long licences to two teams of scientists that hope to use the embryos to study stem cells, the body's master cells that have the potential to form any tissue or organ'²⁸. The British scientists, said the report, would try to create human-animal embryos; but reported the anti-abortion and religious groups as claiming that 'the research would undermine human dignity and blur the boundary between humans and other species':

"Scientists at Newcastle University and King's College London want to create hybrid embryos by merging human cells with cow or rabbit eggs, in the hope of extracting valuable embryonic stem cells from them. The cells are expected to lead to revolutionary therapies for diseases such as Alzheimer's, Parkinson's and even spinal cord injuries" ²⁹.

From the equality angle law is still unsettled between two children of a woman if she acts like a natural mother in case of the one and surrogate mother in case of the other. The cloned persons may present a complex problem so far as equality is concerned. Considering that there is an increasing anxiety among the

²⁵ See, the section on Patents under TRIPs.

²⁶ For Example, see the UK law on the point.

²⁷ See, The Hindustan Times, Lucknow Edition, dated 14.12.2007. In the same paper there is a news item showing the cats cloned by South Korean scientists. These cloned cats glow in the dark when exposed to ultra violet beams.

²⁸ This article appeared in the Guardian on Friday January 18 2008 on p4 of the UK news section.

²⁹ Ibid.

scientists to create clones of big brains like Einstein's the question may emerge before the world sooner rather than later: what are the legal rights of a clone of a person A vis-à-vis A, or, off-springs of A?

And equality will undoubtedly be at the centre stage of such discussion.

III. IV. Political Participation of the Third Kind:

Another phenomenon which has recently surfaced on the Indian political scene is the successful attempts by eunuchs in political participation. The law as it stands now doesn't recognize them either in male or in female category. They are the both; they are none, so goes our thinking. They can't be denied political participation because that would tantamount to discrimination on gender basis and, consequently, a denial of equality.

But then the question is: which gender? The law so far does not recognize common gender in case of citizens. But even if it does, there is no denying the fact that exercise by eunuchs of their right to equal participation in politics has introduced a new trend on political horizon and added a new facet to equality issue.

And, reservation for women has made the politician-*kinnars* more miserable. Recently the Allahabad High Court³⁰ quashed the election of a eunuch for the post of mayor declaring that the said eunuch was a male while the mayor's post under consideration had been a reserved seat for women!

III. V. Equality and Pre-historic Men:

Another case is that of the tribal and pre- historic men who live in great forests of India, Africa and other nations of the world. Environmental degradation has attracted government efforts to preserve forest resources.

If the tribal people were not allowed to live as they have been living since times immemorial, it would be an interference with their right and personal liberty and, hence, a violation of their right to equality. On the other hand, if they are not forced or persuaded to live according to modern day requirements, it is going to affect the right to life of all others and consequently to become an encroachment upon their (that is, the latter's) right to equality³¹. Similarly, efforts are being made by the governments to make these pre-historic men learn how to live a modern life. While this may be seen as a special endeavour to let them have the fruits of the right to life and right to equality in the modern sense, it stands the risk of making them extinct.

Equality has landed in a different zone where it has very hard options: either to respect their right to life and let them remain what they are, that is, a specimen of the prehistoric era and a subject of anthropological investigations; or to see their right to life in larger perspective and make them modern.

³⁰ It was the case related to election for Gorakhpur Mayor in the state of Uttar Pradesh.

³¹ Of late tribal people in India have started to become a part of the mainstream, and the Scheduled Tribes and other Traditional Forest Dwellers Act, 2006 (effective from January 2008) is likely to better their lot even further.

But, then, equality may still be at the receiving end of this exercise as it is not clear what would happen if they are forced to forget their former life-style, but they fail to acquire the modern way of life.

Part IV- Conclusion and Suggestions:

Equality has shaped itself amidst a variety of inequities prevalent in the societies concerned. The delicacy of the value may be appreciated from the fact that despite the pious and egalitarian attitude of the philosophers and law-givers probably it was a slight negligence on the part of the enforcers of law that the man was caught in to the trap of his own making, for example, untouchability.

It appears that equality has got innumerable dimensions all of which have their own significance although all aspects may not be suitable or likeable to all which is but natural. All the people in the world see different shades and aspects of sun at a given point of time. Yet the sun is there for all, even for those who are not able to see it for the time being, since they know they are to see shortly the sun in its full glory simply because that is there. At times, we may like its natural beauty, at other times we may de-taste its heat but at all times it is there for us for our benefit.

Similar is the case with equality. It can not be looked at in a particular fashion only because it influences several other concepts and vice versa. Also, while talking of equality the diversity resulting out of personality, culture, ethos, society etc must be taken into account otherwise it may result in a complete mesh; thus frustrating the efforts aimed at realization of equality as a human value. Going even further it may be said that the diversity in personality, society, ethos of a community etc inter se also can not be wished away during equality measurements and, hence while formulating policies and plans. Doing otherwise may at times prove disastrous. Therefore it is of utmost importance to ensure that focus on one field to achieve equality may not disturb or worsen the state of equality in other focal variables:

"The differences in focus are particularly important because of extensive human diversity. Had all people been exactly similar, equality in one space (e.g. incomes) would tend to be congruent with equalities in others (e.g. health, well-being, happiness). One of the consequences of 'human diversity' is that equality in one space tends to go, in fact, with inequality in another".³²

Therefore the lawmaker no matter where he is has to tread very cautiously while he ventures to make the equality a reality for his people. It will be good if his measure helps the people concerned realize this great value; better if it does not entail a certain amount of inequality for them in other walks of life; and best if it promotes or, at least does not prove detrimental to the right of equality enjoyable

³² See, Amartya Sen: Inequality Re-examined, op. cit. at p.20.

by the people in the rest of the world.

In the end following suggestions are made:

- 1. In the modern world the concept of global village has not only brought people closure but has also made them more exposed towards each other. Thus the law-maker must keep an eye, as far as practicable, on the global impact of law he makes; particularly so when the issue is as sensitive as that of equality. For example, if a country makes law, say, on gay rights acceding all their demands; this is likely to give an impetus to gay movements on similar lines in other parts of the world forcing the law-makers there to come out with similar legislations. This may prove hazardous to the ethos of other communities who can not come to terms with the aspect of equality in question.
- 2. When it comes to application of science and technology, the law-makers and governments should ensure both that the said application is to the welfare of the people concerned and also to the mankind in general, and that it does not disturb the nature and in particular the human environment. For example, the law-maker and the government should see that the fine distinction between cloning for purpose of human welfare and that for disturbing the order of things in nature is not blurred.
- 3. Equality is a pious concept and a sublime value that has to be at the root of every enlightened society, but taking equality measures is like operating a double edged sword that should be handled with great care and caution, failing which inequality may ensue and frustrate the purpose of achieving overall equality. Indian experiment on social justice is a pointer in this direction. Such an unpleasant effect can be avoided if one adopts a holistic approach but at the same time does not lose sight of the natural human diversity.
- 4. Those at the helm of affairs must clearly know that <u>equality is not only a</u> <u>great value but an ideal one the realization of which requires more than</u> <u>slogans</u>, rhetoric, equivocation and populist measures. Sometimes, if not often, it may demand sacrifices: social and political both to achieve such a lofty ideal. After all, it is almost as great as Brahma itself.
- 5. As new and strange demands surface the equality issue cannot be looked <u>into isolation</u>. For this the formula of "think globally act locally" should be adopted otherwise it may tantamount to bidding goodbye to this noble value, that is equality.