

THE CONSTITUENT ASSEMBLY DEBATES

AND

THE IDEA OF EQUALITY

*Dissertation submitted to Jawaharlal Nehru University
In partial fulfillment of the requirements
For the award of the degree of
MASTER OF PHILOSOPHY*

Swaha Swetambara Das

**Centre for Political Studies
School of Social Sciences
Jawaharlal Nehru University
New Delhi**

1999



Jawaharlal Nehru University
New Delhi 110067, India

CENTRE FOR POLITICAL STUDIES
SCHOOL OF SOCIAL SCIENCES

CERTIFICATE

This is to certify that the dissertation entitled "**The Constituent Assembly Debates and the Idea of Equality**" submitted by **Swaha Swetambara Das** in partial fulfillment of the requirements for the award of the degree of **Master of Philosophy** is her own work and has not been previously submitted for any other degree of this or any other university

We recommend that this dissertation be placed before the examiners for evaluation.

Dr. Kiran Saxena
(Chairperson)

Dr. Rajeev Bhargava
(Supervisor)

CONTENTS

ACKNOWLEDGEMENTS

PREFACE	1-7
CHAPTER I : LIBERAL EQUALITY	8-34
CHAPTER II : RESERVATIONS – EQUALITY OF OPPORTUNITY ?	35-69
CHAPTER III : EQUALITY – A RIGHT TO WELL- BEING ?	70-103
CONCLUSION : A SOCIAL REVOLUTION BELIED ?	104-109
BIBLIOGRAPHY	110-113

ACKNOWLEDGEMENTS

I would like to thank my supervisor Rajeev Bhargava for his guidance, and more importantly, for his patience in dealing with the whole bunch together.

I would like to thank my teachers at the Centre who helped me whenever the need arose.

I would like to thank all my friends for sustaining me through this work, and for helping me in the race against time, as I try to tie all loose ends in the end.

I would like to thank the staff of Jawaharlal Nehru University Library and the Nehru Memorial Museum and Library.

Bapa, Gulu and Munu were always there – a sounding board for my all my cribbing, and for my tense moments. I wish Bau had been here, too. What do I say to you ?

PREFACE

“Success comes to political ideas not when they are justified in seminar and speech, but at the moment of their application to life and society. And so it is with equality. Its success and importance lie not in its crystalline beauty among abstract conceptions, not even in its moral power, but in countless attempts to realize equality in polity, economy and society.”

Douglas Rae : Equalities (1)

The Indian Constitution, K. M. Panikkar wrote in “In Defence of Liberalism”, was the most comprehensive enunciation of liberal principles than was available in any previous document. This was because it added justice to the French revolutionary principles of equality, liberty and fraternity, defines liberty comprehensively, and included in its conception of equality not only equality of opportunity but of status, as well. (Panikkar 1962: 16)

The demand for equality has been a compelling demand in the modern age, and has acted as a strong propellant for several movements for its realization. The cry for liberty, equality and fraternity has been a strong propellant of many anti-apartheid movements, anti-colonial movements, workers' movements. What has been demanded is the recognition of the moral equality of all human beings by virtue of their common humanity, and its realization in the real world. What drives this demand for equality ? The denial of equality among human beings breeds disparities, and is anti-thetical to the self-respect

of human beings. It arouses resentment, envy and anger, sometimes leading to overt acts of violence, that is destructive of the community. As the self-respect of each individual matters, the demand for equality is a strong one. At its most basic level, equality means that every being matters, and therefore that every human being is entitled to equal respect and equal concern as any other.

The framers of the Indian Constitution evoked the idea of equality consistently, though there were several sometimes conflicting, sometimes overlapping, conceptions of equality that emerged in the Constituent Assembly. Should the right to equality be limited to the political and legal fields, or should it be extended to the economic realm as well? Even in the economic realm what did the idea of equality embody? Did it mean a guarantee of the satisfaction of the basic needs of each individual citizen or the nationalization of the means of production or of redistributive measures beyond the satisfaction of the basic needs of individual citizens? The Constitution sought to secure social, economic and political justice for Indians. There were frequent references to a social revolution that would be ushered in after independence. Yet in spite of the repeated avowal of a commitment to equality in the economic, social and political fields, the incorporation of only the Right to Property into the list of Fundamental Rights was a glaring disavowal of the commitment to equality. Thus, those rights that sought to establish state obligations towards citizens to ensure them the satisfaction of at least their very basic needs were said to be in nature of non-justiciable rights and incorporated into the Directive Principles of State Policy. This led many members of the Constituent Assembly to say that

the Directive Principles of State Policy were only pious wishes, for they lacked the force attendant with rights.

The question that concerns us today is not whether individuals should be treated as equals. Rather, the question is about how individuals should be treated as equals. Equality, however, has not been an uncomplicated, uncontroversial concept. Rather, it has given rise to many different, and often competing conceptions. So what is equality for the utilitarian is seen as violative of the liberal notion of equality of each human being. While the libertarian would say that the principle of equal respect for each individual demands that the right to property be inalienable, the liberal egalitarian finds in the inalienable right to property, a violation of the principle of equality of all human persons. Therefore, the question that has exercised contemporary political philosophers has been the question of equality of what ?, ie the question of equality in what sphere. Equality in one sphere often demands inequality in some other sphere. This is justified on the grounds of the demand for equality in that particular sphere. Thus, this concept operates in a vast plethora of different conceptions.

This idea of abstract equality is used to emphasise the notion that no matter what the differences and inequalities among human beings in this world, at an abstract level, by virtue of their common humanity, they are entitled to equal consideration, and so any treatment that is perpetuated with the intention of degrading some at the cost of others is unacceptable.

Yes, human beings are not similar in intellectual prowess, possession of wealth, strength of character etc. all of which vary among human beings. Yet should these be pertinent to the question of equal consideration from the state? What does not follow from differences in intellectual prowess, possession of wealth or strength of character that for these reasons, individuals or classes should receive less consideration than others, or should be treated as inferiors in certain areas by the state.

This notion of equality is based first and foremost on the idea that each individual is entitled to equal respect and consideration from the state. This is related to the notion of the distinction between the two notions of the right to equality – the right to be treated equally and the right to be treated as equals. The right to be treated equally refers to an equal distribution of certain goods and opportunities. For example, in the modern state, this means the principle of one person, one vote. The second notion of equality refers to the right to be treated as equals, which is the right to be entitled to not just respect and consideration from the state, but the right to equal respect and consideration from the state. This is different from the notion of the right to be treated equally, and it forms the core of liberalism, according to Dworkin. This does not mean an identical distribution of certain goods and services. Rather, how equality of consideration is to be achieved,

“It is to be achieved, not by treating different needs in the same way, but by devoting equal care to ensuring that they are met in the different ways most appropriate to them, as is done by a doctor who prescribes different regimens for

different constitutions, or a teacher who develops different types of intelligence by different curricula. The more anxiously, indeed, a society endeavours to secure equality of consideration for all its members, the greater will be the differentiation of treatment which, when once their common human needs have been met, it accords to the special needs of different groups and individuals among them." Tawney then argues that equality of provision is not identity of provision. (Tawney 1952 :)

There is a disavowal of this idea of equality as one single conception. Equality would thus sometimes mean identity of treatment, at other times differential or special treatment. There is, thus, no one rigid notion of equality. Adhering to a rigid notion of equality smacks of an ahistorical approach that fails to take consideration of actual existing circumstances. For the idea of equal consideration and respect means that the existing ground realities also be taken note of, in effecting any idea of equality. As Kymlicka quoting the Canadian Supreme Court judgment on an issue says the accomodation of difference is the true value of equality. To assume that equality lends itself to just one interpretation is therefore fraught with many problems. For, it lends itself to many varied interpretations.

In my dissertation, I will try to look at some of these questions that were raised in connection with the idea of equality in the Constituent Assembly Debates. My concern in this dissertation is with the question of the right to equality of opportunity, and affirmative action, and secondly, with the question of the right to equality of material welfare, or the right to equality of condition.

In my first chapter, I would look at the concept of liberal equality, and the question of compensating for disadvantaged circumstances that lie beyond the control of human beings.

In my second chapter, I would look at the following issues as they were raised in the Constituent Assembly Debates. Is the system of reservations, whereby members of particular groups are given competitive advantage over others compatible with the right to equality, or is it violative of the right to equality of opportunity? How did reservations seek to establish equality among individuals, and equality among groups? What was the ultimate idea behind reservations – what was the purpose of reservations? What were the arguments put forth against reservations? This chapter will also seek to look at the issue of how political equality in the public realm necessarily seeks recognition of group identity as well, for equal citizenship rights by themselves would not suffice to grant the status of equal citizenship to members of certain groups.

In the third chapter, I will look at the question of the right to equality of condition that is sought to be ensured by a system of welfare rights. The only economic right incorporated into the list of Fundamental Rights by the Constituent Assembly was the right to property, though there were many arguments put forth that argued that citizens were entitled to equality of material well-being. Therefore, welfare provisions of the state had to be made stronger, and welfare rights had to be made justiciable. However, finally this was not accepted by the Constituent Assembly.

This dissertation is an attempt to examine some conceptions of equality as they emerged in the debates of the Constituent Assembly of India. It is limited in its scope, for the Constituent Assembly Debates form a vast corpus for the study of various concepts of political theory. This work merely serves as an entry point into examining two particular questions on the right to equality – the question of reservation and the question of welfare rights – both of which seek to level the playing field for individuals placed on an unequal footing. Simultaneously, we will also seek to study some conceptions of equality in contemporary liberal theory.

There are certain liberties that one is taking here while looking at the Constituent Assembly Debates. One is applying certain new tools to study the debates which took place more than fifty years ago. So one is using many contemporary concepts in political theory in examining the debates. This is the liberty that one is taking while looking at the debates, and seeking to interpret them in the light of contemporary liberal theory.

CHAPTER I

LIBERAL EQUALITY

It is a generally agreed upon principle that a modern society should respect its citizens equally in some respect. The question now is in what respect. For equality is a concept open to many conceptions, as it operates in the real world. If we all agree that all individuals are the moral equals of one another by virtue of their common humanity, then the problem that concerns us now is not whether human beings should be treated equally, but rather the question that arises now is how human beings can be treated equally. And political philosophy is concerned with this question of how to treat people as equals. Different conceptions of equality abound as equality traverses over time and space.

The moral equality of individuals could be based on any of these grounds – rationality, sentience, capacity to make choices. The ability of the individual to make choices is an important aspect of liberal theory. A liberal state seeks to ensure to each individual the freedom to exercise choice. For liberals the best state of affairs is that set of rules or that framework that would best secure that the government treat its citizens with equal respect, and not seek to impose any particular conception of the good. Liberalism in this sense is concerned with rules, with rules that would enable the individual to pursue his own conception of the good so long as he does not act unjustly or infringe on the freedom of others. Equal rights seek to ensure to individuals an area of non-interference where they can freely exercise their choice. If choice is so important for the liberal, then

how would a liberal seek to remedy a disadvantaged social or economic situation where the individual finds himself, and for which he is not responsible ?

Would a commitment to the idea of according equal concern and respect to each individual citizen permit a situation that penalizes people for the adverse circumstances they find themselves, and for which they are not responsible ?

How would liberal egalitarians try to remedy this situation to accord equal concern and respect to each individual ? How would liberal egalitarians deal with this problem ?

The liberal notion of according equal concern and respect to each individual is distinct from the utilitarian notion of doing so. A utilitarian sees society as one large corporate person, as an organic whole. A utilitarian would say that treating people as the moral equals of one another means giving equal weight to each person's preferences, with each person counting for one, and no one for more than one while aggregating preferences or utilities. So each individual has an equal vote in the aggregation of utilities or preferences. The utilitarian is not bothered about equality in distributive shares. Rather, his concern is with individuals as equal holders of utilities or preferences which are then aggregated and maximized. Trade-offs between the preferences of individuals are permitted, if an individual's preferences do not tally with the overall maximization of preferences. A liberal would find this state of affairs that sacrifices an individual's preferences or interests for the sake of maximizing social utility or aggregating social utility a problematic state of affairs, and would see the utilitarian notion of utility a violation of the principle of treating each

individual as an end in himself. Thus, by allowing the sacrifice of an individual's interests at the altar of social utility, we diverge from the principle of treating each individual as an end in himself or herself. In the utilitarian conception, a liberal would say that we treat individuals as means in promoting social utility. Thus, a liberal would say that a utilitarian fails to see what it is about human beings that deserves equal concern and respect.

What does the principle of liberal equality mean then? Linked to the modern notion of the dignity of the individual citizens, it means that citizens have a right to be treated with concern, i.e. as human beings who are capable of suffering and frustration, and with respect, that is as human beings who are capable of making their own life plans. A liberal would say that society cannot be considered as one corporate person. Rather, it is made up of many people, and each of them demands respect and concern for his well-being. Thus, this principle says that the government must not only treat people with concern and respect, but with equal concern and respect. Goods and opportunities cannot be distributed unequally on the ground that some are more worthy of concern. (Dworkin 1977 : 273) Thus, what this abstract notion of equality has come to signify at its basic minimal level is non-discrimination or impartiality, that is, a government should not arbitrarily discriminate in its treatment of one citizen versus another, but should impartially treat all citizens in a principled way. The interests of a citizen should weigh the same as any other in government policy. This is different from the utilitarian principle which says that everyone's welfare or preferences should count equally in the aggregation of welfare or preferences,

irrespective of the consequences on distribution. A liberal would not aggregate or conflate people's preferences or welfare. In stead, a liberal would say that a state should be more responsive to the distinctiveness of each individual.

To a liberal each and every individual matters. Kant said that people should be treated as ends in themselves and not solely as means. If someone has intrinsic worth because he is an end in himself, and not merely valuable as a tool or a means to someone else's ends, then his importance and interests should be acknowledged by other people and institutions, the state included. (Hampton 1998 : 135)

A liberal state is an impartial state. Where does this demand for equality and impartiality arise from, and why does equality matter ?

Thomas Nagel has an interesting answer to this question. He situates this compelling demand for equality and impartiality within the individual self. If we think of the individual self as a microcosm of society, then we would observe that there is a division in each individual between two standpoints : the personal and the impersonal which is the claim of the collectivity. Since society is composed of several individual selves, for a social arrangement to function, it is important to establish a corresponding balance of forces within the individual. There is an impartial standpoint within the individual which arises from the impersonal attitude, and which gives rise to a powerful demand for universal impartiality and equality in each of us. On the other hand, the personal standpoint gives rise to individualistic motives and requirements which present obstacles to the pursuit and realization of such ideals. (Nagel 1991 : 64-65) For a polity to function,

what is required is a balancing of these two aspects of the individual, the claims of the personal and the impersonal. Thus, there is a perpetual struggle to establish a balance between these two standpoints, and that is one of the reasons the pursuit of equality is not such an easy task.

How does a concern with impartiality translate into a concern with equality? " It is because impartiality, the claim of the collectivity, is a value that we seek more equality than we have." (1991 : 65). Nagel says that this attitude of impartiality is egalitarian, both in itself, and in its implications. Impartiality emerges from our capacity to abstract from who we are, but it takes into account the value of every person's life and welfare. Thus, each person's well-being matters, and from the impartial standpoint, the primary importance of everyone is the same. If impartiality is not considered an important element in evaluating a social system, if every such system is just a bargain struck among self-interested parties, then equality will not have value as a good in itself. Rather, it will be merely of instrumental value in stabilizing the system. Thus, in evaluating a modern system, equality has value as an end state principle. Because impartiality is an important value, it becomes important to give equal concern and respect to each person.

A commitment to equality is often considered to be the core principle of liberalism. (Dworkin 1978: 115) This commitment to equality could be further explicated as the right to be treated as equals and the right to be treated equally. The right to be treated equally means an equal distribution of goods and opportunities. The right to be treated as an equal means the right to equal

concern and respect in political decisions about how these goods and opportunities are to be distributed.

This idea of equal concern and respect is compatible with the idea that those who are disadvantaged or in greater need be entitled to a greater share of the same resource. This second principle, Dworkin says, is the core principle of liberalism, while the first principle is the derivative one. While the right to be treated as an equal might sometimes entail the right to be treated equally, this is not always so. So equal concern and equal respect for individuals does not always translate into an equal distribution of goods and services. Rather, an unequal distribution might be required by that very principle (1978 : 125-126). This is so as in Aristotlean terms, justice requires that equals be treated equally, and unequals, unequally. There is injustice if unequals are treated in the same manner.

Thus, what emerges from Dworkin's argument is that there is no one rigid conception of liberal equality. Rather, the right to equality might sometimes require similar treatment, while in other cases, it might require special treatment. Equality is thus amenable to many different conceptions.

This disavowal of a rigid conception of equality also emerges from Charles Beitz's arguments that there is no one rigid conception of equality.(1989 : 225) As this concept traverses across time and space, it lends itself open to varying conceptions. Feminists have argued that it is important that we realize that there is a difference between being treated as equals and being treated as if we were the same. By adhering to a simple univocal principle of equality, we reduce it to

an ahistorical concept that would refer to a set of prescriptions that apply regardless of the historical context. (Phillips 1995 : 36-37). By doing so, we often fail to distinguish between situations where similar treatment is required and where special treatment is required. "It is important to recognize that in some circumstances, equality means differential treatment; in other circumstances it means treating people the same – there is no logical or political requirement to stand by just one of these two options."(Phillips 1995 : 37) In fact, when we stick to an overly rigid understanding of equality, we cannot see this. So equality as a concept lends itself to varied conceptions – each as a response to a particular context. As equality operates to take account of ground realities, it is amenable to many different conceptions.

The question of equality as similar treatment or equality as special treatment has several implications in policy-making, political philosophy and legal jurisprudence as well. As this abstract principle operates in real life, it is qualified and modified in accordance with ground realities. Thus, affirmative action programmes which seek special treatment for the individuals of certain groups are also based on the principle of treating human beings as equals. Thus, these programmes are based on equality, as well.

What is the liberal idea of equality of all persons founded upon ? Liberal equality is founded on two general characteristics of individuals as equal beings. (Gutmann 1980 :) These are based on two aspects of human personality. The first is the criterion that people are assumed to be similar in their passions, and in their general capacities for pleasure and pain as well as in their aversion to

certain pains and in their desires for certain pleasures. The second foundation of equality is the emphasis on the possession or the capacity to possess rationality. Thus, all people are judged to be adequately rational beings, with an assumed capacity to create reasonable life plans, and to exercise the power of making choices. For liberals then, the potential capacity to make choices is an important characteristic of individuals.

The idea of the moral equality of all individuals is deeply embedded in liberal political theory, and this forms the basis of the social contract theory. What is the purpose behind the social contract theory ? The social contract argument is an argument about what sort of a political community people would set up when they are situated in the original position, and are suspended from their particular identities. The question that this seeks to ask is what kind of a political arrangement individuals in the state of nature agree to about the establishment of a political authority.

The purpose of the social contract is not an attempt to establish a historical or a hypothetical contract. Dworkin points out that the social contract is an attempt to assert the implications of the moral equality of individuals. (1977 : 177-179) Locke argued that while differences in age and virtue might be there among men, it was the equal right of every man to his natural freedom without being subject to the will or authority of any other man. The natural equality doctrine was asserted with a claim about freedom – that men were born free, and not subject to any political allegiance or obedience. Thus, if the government was not naturally ordained, it could only be the result of free and equal individuals

coming together, and choosing to set up political institutions that reflected their apprehensions of the necessity of such institutions, if others also felt so. The state of nature is thus a device that seeks to assert the absence of natural subordination among people in a natural position of equality. The idea of being moral equals means that none of us is inherently subordinate to the will of others, none of us is the property of others. It seeks to establish freedom and equality among all individuals.

However, there could be a problem of inequality in the state of nature that arises from people's unequal possession of natural talents, initial resources or sheer physical strength, and those who possess these qualities can hold out longer than others who lack these qualities. So what does one do about that? To deal with this situation, Rawls devises the scheme of the veil of ignorance that suspends people's knowledge of their contingent identities.

The veil of ignorance is used to ensure that no one knows his place in society, his class position or social status, nor his intelligence, his strength and the like. These parties are not even aware of their conceptions of the good. Thus, all would be located in similar situations, and no one would be able to design principles to favour his particular condition. Each person is aware that in the real world he could end up in any position – that of the well-off or that of the worst off. As a result of this fair bargain, the principles of justice emerge. (1971: 12) Thus, the notion of the original position used in *A Theory of Justice* is intended as a device to assert the moral equality among human beings, and the principles of justice which emerge from this are those that people would have

consented to, as moral equals, neither advantaged or disadvantaged by contingent identities like those of class, sex, religion etc.

Along with the recognition of individuals as moral equals, it becomes important for liberals then to take cognisance of those inequalities that result not from individual choice, but from circumstances beyond the control of the individual. So it is unfair to penalize the individual for these inequalities. A liberal egalitarian might agree to allow the operation of the market system in the economy. Now this is not because the liberal in general values liberty more than he values equality. Rather, the operation of the market system might be required by the very principle of equality itself ie. allowing every individual the right to exercise his capacity to make choices. This would also tell liberals to limit the market where it penalizes people for reasons other than their choices. In both cases then, it is the commitment to the principle of equality that drives liberal egalitarians to adopt these policies.

Arguing against any form of redistribution that seeks to transfer resources from the more advantaged sections of society to the less well-off, a libertarian would question why the least advantaged should have the right to have some part of the proceeds of the labour of others. The argument against redistribution is again based on the idea that human beings are responsible for the choices that they make. Thus, here the idea is that people should be held responsible for the choices that they make with respect to how they will use their labour and their property. Thus, what is argued here is that if people are not judicious enough in making choices, and are not hard-working, then they should

be held responsible for these choices, and not be bailed out by a redistributive system. When people are hard-working, and wise in investing well, then they are responsible for these choices, and have a right to whatever benefits accrue from this.

A libertarian would argue that people are responsible for whatever choices they make, and whatever circumstances they find themselves in. It is up to them to extricate themselves from unfortunate circumstances, and they are not entitled to the proceeds of the labour of others to extricate themselves from any such situation. Thus, a libertarian would favour a minimal state which would be based on the Kantian principle of treating each individual as an end in himself and not as a means to someone else's welfare or goals.

A liberal egalitarian would differ from the libertarian on this issue. Why does inequality in material welfare or inequality in the satisfaction of basic needs matter to the liberal egalitarian? Apart from the basic inhumanity of a political and economic system that permits a situation where some are denied the right to the satisfaction of even their basic needs, what matters is that this is not a situation any human being would choose to be in. Thus, under no circumstances would I choose to be in such a deplorable situation of degradation. Under no circumstance would I like to be in a situation where I am marginalized for reasons beyond my control, and for which I am not responsible. I would generally not choose to enter social relations where I am denied the opportunities for skill-development, personal accomplishment and the exercise of responsibility. (Kymlicka 1989 : 87) Thus, if I find myself in the

position of a manual labourer, and do not have access to proper educational and health facilities, this situation is not a result of my choice. Nor am I responsible for this state of affairs. Had I been in a position of initial equality with say, a doctor I would never have consented to this position. So this is a situation that results not from my choice, but from circumstances beyond my control. If I am the son of a daily wagger, and am denied access to even the basic minimal necessities of life, this is not the result of my choice. Rather, it results from conditions beyond my control.

Even the commitment to the right to equality of opportunity which is seen as a principle of fairness in liberal societies, is agreed upon because it seems to ensure that people's fate is determined by their choices, rather than by their circumstances. In a society that recognises equality of opportunity as a value, it is believed that my success or failure would be a result of my own performance, and not the result of my membership in a privileged class or group. Thus, if we have a society where the privileges or the disadvantages of social circumstances do not hamper or help people, then people would succeed or fail by their own efforts and choices. In such a situation then, if there is inequality in achievement, it is because of people's own choices or merit or hard work.

Thus, the central idea in this case is that people can have access to unequal shares of goods if such inequalities are earned and deserved by the individual, that is if they are a result of their own efforts. A liberal egalitarian would also say that a situation where individuals are disadvantaged or privileged

by arbitrary and undeserved differences in their social circumstances is not an acceptable state of affairs.

If we recognize that it is wrong to penalize individuals for circumstances beyond their control, then we should look towards some form of rectification of this malady. And how is this sought to be achieved by a state ?

This question of equalizing circumstances has led liberals to explore many ways of trying to deal with this problem. What should liberals do to equalise circumstances ?

This has led Rawls to say that the general principles of justice demand that all social primary goods – liberty and opportunity, income and wealth, and the bases of self-respect -- be equalised, unless an unequal distribution of any or all of these goods is to the advantage of the least favoured. (1971: 303) The basic crux of Rawls's argument is that inequalities are allowed if they improve my initially equal share, but are not allowed if they invade my fair share. (Kymlicka 1990: 53).

Our problem here is with establishing the initial level of equality or with establishing equality of condition, by ensuring to each individual the fulfillment of his basic needs which include educational and health facilities. The level of fulfillment of needs would be determined with regard to the productive capacity of the state. Here we are not dealing with the question of equality of results or outcomes. Inequality of results or outcomes could be the result of differences in hard work or natural talents. Now differences in natural talent could lead to differences in result or outcome, though this again is a situation where the

individual is not responsible for the relevant differences. But sometimes it is difficult to distinguish between hard work which is within the control of the individual and talent over which the individual has no control. So, our concern is with equalizing circumstances so that no one is unduly advantaged or disadvantaged by what could be said to be objective circumstances. This would mean that every individual starts life with at least a minimal equal share of a society's resources, ie. in terms of health and education facilities. This is an attack on hierarchical systems that disadvantage some individuals for no fault of theirs. So how do liberals seek to address the question of rectifying those disadvantaged circumstances that individuals find themselves in, and for which they are not responsible ?

Affirmative action programmes and special representation rights on the one hand and welfare rights on the other hand are seen as two strategies that liberals adopt to seek to rectify situations where individuals are penalized for circumstances beyond their control. Thus, these programmes attempt to level the playing field for individuals of different groups. Advocates of these strategies assert that they are based on the commitment to the principle of treating individuals as equals. These programmes thus, seek to compensate individuals for circumstances beyond their control.

All liberals agree that equal rights of citizenship include the rights of freedom of expression, of religion, the right to vote and stand for office in free elections that determine who controls the government. This is based on the principle of political equality of all citizens. However, often equality in the political

TH-7931

DISS

342.54029

D2605 Co



TH7931



or the legal spheres is hampered by inequalities in other spheres which are beyond the control of the individual.

Let us take the case of the difference prevalent between the rich ill and the poor ill. Now this is a situation where those with similar needs do not receive the same kind of treatment. Medical treatment is given on the grounds of need, and not on any other specific grounds, but when some get it, and others don't, though both need it, this is an irrational state of affairs. Why is this an irrational state of affairs ? It is because there is "a distinction between a man's rights, the reasons why he should be treated in a certain way, and his power to secure those rights, the reasons why he can in fact get what he deserves." (Williams 1971 : 122). This is a situation where reasons are not sufficiently operative ie. a situation insufficiently controlled by reasons. Thus, while evaluating unequal circumstances, when we combine the notions of the operativeness of reasons with the relevance of reasons, then we could be said to have a genuine moral weapon, to be applied to cases of what is called unequal treatment. (Williams 1971 : 122-123) The principle of equality says that for any form of differential treatment among individuals, a reason has to be given. The differential treatment between giving one individual access to medical facilities and denying it to the other is because of inequalities in the economic condition between the two, and this is not a substantial reason.

To insist that everyone has a right though only particular people can secure it rings hollow. Isn't this violative of each person's entitlement to be treated as equals ?

What we are concerned about is not merely the abstract existence of rights but also the extent to which those rights govern the ground realities. Thus, in Williams's formulation of equality, what this implies is a strengthening of the principle that for every difference in the way people are treated, a reason should be given. What is further required is that the reason should be socially operative.

Let us come to the question of equality of opportunity. This means that everyone in society should have an equal opportunity to secure certain goods. Now this means that a limited good shall be allocated on grounds which do not a priori exclude any section of those that desire it. However, the criterion of ability or merit excludes a priori a certain section of people, those who are not able, just as we saw that in the case of the right to medical treatment, the poor were excluded because they did not have sufficient resources. (Williams 1971 : 125) Now the question of ability or merit is more often than not linked to the issue of socialization and the privileges conferred by access to good schools, and better education and training facilities. What it requires is that there should be no exclusion from access on grounds other than those appropriate or rational for the good in question. However, the grounds considered appropriate for the good should themselves be such that people from all sections of society should have an equal chance of satisfying them.

Often the well-off monopolise certain positions in spite of the provision of equality of opportunity because of their access to better education and training facilities. Now the failure of the not-so-well off to qualify for certain jobs is often

attributed to their bad luck, as if this state of affairs is a situation beyond the control of human beings to alter and change. Thus, the worse-off are excluded from jobs on the grounds that they are not meritorious enough or not hard-working enough or are plain unlucky, when the actual reason is to be found in their being placed in disadvantaged circumstances, for which they are not responsible, and the alteration of which is beyond their control.

Thus, the equality of opportunity provision is quite empty unless it is made more effective than this, and this is an alterable situation, for it is possible to do something to alter this state of affairs. To attribute the inability of the worst-off to succeed to bad luck when it is in fact an alterable situation is a sham. Thus, to quote Williams, "It seems then that a system of allocation will fall short of equality of opportunity if the allocation of the good in question in fact works out unequally or disproportionately between different sections of society, if the unsuccessful sections are under a disadvantage which could be removed by further reform or social action. Better skills, greater intelligence and better talents are often the product of environmental factors, and we further know that imaginative social reform would favourably affect those environmental factors." Therefore, the system of educational selection falls short of equality of opportunity. Equality of opportunity, by itself fails to take into account the differences in circumstances in which individuals are placed, and because of which some are more successful than others. Thus, in such cases, inequality in outcome might not be because of differences in levels of hard work or in the possession of talents. Rather, inequality in circumstances, sometimes beyond the control of the individual

would result in inequality of outcomes. Formal rights of equality of opportunity are quite empty without substantive material equality.

Williams's contention then is that there is a denial of equality of opportunity without equality of condition. So it is important to equal up conditions. To give two people equality of opportunity means that their conditions, where curable, should also be equalized. Thus, if we say that Ram and Shyam both enjoy the right to equality of opportunity, then what this should mean is that they both operate from the same level of condition. There is a denial of equality of opportunity when we apply the same criteria to Ram affected by favourable circumstances and to Shyam affected by unequal circumstances. As Williams says, "To give Smith and Jones equality of opportunity involves regarding their conditions, where curable, as themselves part of what is done to Smith and Jones themselves, and part of Smith and Jones themselves. There is a distinction between people's identities and their curable environment, which is itself unequal and a contributor of inequality." Liberal egalitarians are then concerned primarily about those circumstances which they think are alterable. Thus, if an individual finds himself in a disadvantaged situation, for which he is not responsible, then the liberal state would seek to remedy the situation.

Welfare rights are another way of dealing with questions of inequality of circumstances which are beyond the control of the individual. What they seek to establish is a minimal equality of condition. The question of welfare rights has been a very volatile issue, as it raises questions about what the proper sphere of

state action should be, with libertarians totally opposed to the scheme of welfare rights as they say that this is violative of the principle of treating individuals as ends in themselves, and not simply as means. This is because welfare rights might necessitate some redistributive measures by seeking to transfer resources from the better off to the worse off. Nozick believes that once we have a property right over something, which is established either by initial acquisition of that object from among the unowned things or derived via legitimate transferring procedures, then it is ours completely, and no one not even the state can take it for a worthy cause. If we allow the state to take some of our property to pursue what it says is a worthy cause, then we allow the state to treat us as a means to pursue this cause, sometimes even without our consent, and this fails to recognise our intrinsic worth. If we are to have the ability to make choices in this world and pursue our conception of the good, we must have absolute control over the objects that we own. Thus, there is a link between having the ability to make choices, and having the possession of property. By denying a person the absolute right over his property, we are treating him as a means, and not as an ends.

In fact, the compulsion to provide for welfare right can be made from the demand for having an impartial political or social order. There is a strong case for translating the concern with impartiality into a concern for a certain degree of material equality in the economic sphere as well. As Nagel asks, "But if everyone matters just as much as everyone else, it is appalling that the most effective social systems we have been able to devise permit so many people to

be born into conditions of harsh deprivation which crush their prospects for leading a decent life, while many others well provided from birth, come to control substantial resources, and are free to enjoy advantages vastly beyond the conditions of mere decency. The mutual perception of these material inequalities is part of a broader inequality of social status, personal freedom and self-respect." (1991 : 64-65)

How does impartiality then call for a demand or a commitment to the question of an equitable level of material welfare of each individual ? This impartial attitude originates from a capacity to take up a point of view which abstracts from who we are, but which appreciates fully and takes to heart the value of every person's life and welfare. (Nagel 1991 : 65) Thus, the well-being of every person matters because from the impartial standpoint everyone's primary importance is the same. It is not the aggregated interests which matter, but rather, it is the particularized interest of each individual that matters from the liberal impartial standpoint. From the two elements present in every individual, ie, the personal and the impersonal, there is a demand for a commitment to a certain level of material welfare, because each individual's well-being matters then.

This question of providing for everyone's material welfare is limited to : (a.) those goods whose equal possession is desirable, because it is closely connected with an individual's needs, and (b.) the lack of the good in the possession of the individual is not the result of a choice made by the individual. Thus, this question of non-responsibility for the good in question is of importance

to the liberal egalitarian. If liberals are concerned with the question of individual choice, then wouldn't they be willing to compensate for differences among individuals when these are a result of circumstance and not of individual choice? A liberal egalitarian's first task would be to rectify those disadvantaged circumstances where the individual finds himself, and for which he is not responsible. This is more so when the disadvantaged state in which the individual finds himself is a remediable one through the restructuring of social and educational institutions. Full equality of circumstances is an impossible task to accomplish. For the question of natural handicaps and that of natural talents would emerge. Now compensating for these would be a difficult task to accomplish. So our attempt here would be to equalize those circumstances that are alterable.

The proper form of equal concern for all might sometimes mean benefits to the worse-off. This flows not just from the theory of diminishing marginal utility which would be egalitarian in its distributive aspects. Thus, if we assume that there is an objective standard of determining each person's basic needs, then we would realize that resources will usually benefit a person with less more than they will benefit a person with significantly more. By adopting the impartial attitude, we ensure that everyone's benefits would count the same. So we would be concerned about fulfilling each individual's basic needs before we allow for greater benefits to some.

Concern for everyone is particularized concern, and it includes separate and equal concern for each person's good. So when liberal egalitarians are

talking about welfare rights, it is the welfare of each individual citizen that they are bothered about. So what is of concern to us here is each person's good.

We discussed the case for welfare rights, which seek to ensure a minimal equality of condition. In the third chapter of this volume, we shall examine the Constituent Assembly Debates justifying welfare rights.

The second way in which a liberal state would seek to compensate for the disadvantaged circumstances in which individuals find themselves, and for which they are not responsible would be through affirmative action programmes which seek to give competitive advantage to members of disadvantaged groups in recruitment for jobs or for admissions to colleges and universities. Special representation rights in the branches of government that are sought for minority groups are also justified from the perspective of marginalized groups who might be dominated or subsumed by the majority group.

The liberal state seeks to abstract people from their differences in the public sphere, and to equalize all members in their political capacity, independently from the particular human beings that they are. Thus, political equality means that there is no importance given to the public relevance of people's special identities, which is defined as being part of the private sphere. In the enjoyment of rights and privileges, all individual citizens are equal. All differences between individual citizens are then reducible to individual claims and demands. Thus, everyone participates in his capacity or her capacity as a member of the polity, and this establishes the enjoyment of the privileges of common citizenship. Now both affirmative action programmes and special

representation rights for minority groups, that ask for special treatment for the members of these groups bring ascriptive identities into the public realm. So on what grounds are these justified then ?

Apart from inequalities in economic condition, people might also be in disadvantaged circumstances because of their membership in marginalized or minority groups. By granting individuals equal rights of citizenship, the liberal state abstracts individuals from their particular identities in ascriptive, cultural or religious groups. Therefore, ascriptive identities, cultural practices and religious beliefs are all transferred to the private realm, while in the public-political realm, citizens are all supposed to enjoy equality of status by virtue of their being citizens in a particular state.

Affirmative action programmes too are demanded by this very principle of trying to rectify situations where the individual finds himself, and which are beyond his control. Thus, affirmative action programmes that seek to give a certain degree of competitive advantage to members of disadvantaged groups are required by the principle of rectificatory justice, whereby an attempt is made to ameliorate situations of backwardness or past injustice or exclusion.

Liberals also recognise the role played by cultural and religious groups in the formation of individual identities. Individual identity is formed by membership in cultural, racial and religious groups as well. This highlights differences among individuals rather than their common citizenship. Yet this recognition of difference is important, and could be interpreted as a person's understanding of who they are, of their fundamental defining characteristics as human beings.

(Taylor 1982) Therefore, many contemporary liberals now make a strong case for the recognition of these identities in the public political realm.

Membership in these groups is not the result of a deliberate choice exercised by the individual. Yet an individual might be impeded in some way by his membership in a particular cultural group. Membership in a minority or a marginalized group might lead members of these groups to feel that common citizenship rights do not suffice by themselves to ensure their right to equality of status. Their identity as a cultural group might not be recognised in the public realm. This means that only the majority culture is recognised. If an individual belongs to a minority culture, it could put him or her in a marginalized mode of being. His or her identity could be subsumed by the identity of the majority culture, and this would deny him a place of equality with the majority group. This is not the result of a deliberate choice exercised by the individual. Thus, the equal recognition of both minority and majority cultures matters because what is at stake here is the equal status of cultures.

How does the politics of equal citizenship rights get reconciled with these differences among individuals ? The idea of difference demands that everyone should be recognised in their own distinctive identity. The politics of equal identity demands an identical set of rights and privileges of citizenship. The politics of difference demands that the unique identity of each individual or group be recognised, as in their distinctness from everyone else. Equal recognition of groups and individuals is important for the functioning of a healthy democratic society. (Charles Taylor 1982) It is important to accord equal recognition to

groups in a multi-cultural society, for without this, minority groups might feel marginalized or neglected. Thus, the most important demand of the politics of recognition is the demand for the equal status of different cultures. Demands for special representation rights in the organs of government are often demands for the equal status of different groups, the members of which might be in a marginalized or disadvantaged position in society for no fault of theirs. By making a case for their representation in the branches of government what you are trying to do is equalize their status and prevent discrimination against the members of these groups.

The liberal egalitarian principle of equal concern for every individual demands that the unequal circumstances where the individual finds himself, and for which he is not responsible be equalized. This has demanded certain rectificatory programmes. This has taken the form of affirmative action programmes, and group representation rights in the political and legal realms, and of welfare rights that seek a minimal equality of condition in the economic realm. What is of value to the liberal is the welfare of every individual citizen. So liberal egalitarians through the policies of the state seek to extend the liberal principle of treating individuals as equals to many different realms – the economic, the political and the social. Thus, unlike the utilitarian, the liberal is not seeking the aggregation of welfare of the individuals in society. As Rawls says justice is concerned not merely with human welfare, but with each individual's welfare. Thus, Rawls does not seek to conflate individuals. Rather, he is concerned about respecting and responding to "the distinction of persons."

What is liberal equality all about ? It is about recognising the intrinsic worth of every individual, and thus, giving him the respect due to him. It demands impartiality by the state in its dealings with individuals. This concern with impartiality and the well-being of each individual is extended to egalitarianism not only in the economic field, but also in the political and social realms, by seeking equality of status, and equal respect for every individual. Thus, liberal egalitarians are concerned not just about redistributive schemes, and such other programmes, but also about expanding opportunities for participation in different realms. Liberal equality is also about recognition, for in the modern world recognition by others is intrinsically linked to your worth as an individual. So contemporary liberals are concerned about the rights of members of minority groups to ensure their equal status as individuals in a multi-cultural state. The principle of treating individuals as equals is extended into many different realms, sometimes providing compensatory measures to individuals for disadvantaged situations beyond their control. The liberal does not seek to disadvantage or discriminate against any individual or group by providing for welfare rights, affirmative action programmes and the like. Rather, it is to rectify previous cases of discrimination and disadvantage that the liberal seeks these measures.

In the next two chapters, we will examine the Constituent Assembly debates to see how the framers of our constitution sought to deal with the question of equalizing the playing field for citizens who come from disadvantaged groups and classes. So how did the framers of the Constitution

seek to rectify the disadvantaged circumstances that individuals found themselves in, and for which they were not responsible ?

The Constituent Assembly members sought to do this by using reservations and welfare rights as modes of rectifying situations of adversity where the individual finds himself, and for which he is not responsible. In the next two chapters, we will also look the justifications put forth for the system of quotas and for welfare rights in liberal political theory.

CHAPTER II

RESERVATIONS – EQUALITY OF OPPORTUNITY ?

Is the system of reservations by which members of certain marginalised groups are given competitive advantage vis-à-vis others a violation of the right to equality of opportunity as guaranteed by modern liberal constitutions ? This was a question raised by the members of the Constituent Assembly when the equality provisions under Fundamental Rights were being discussed. Besides the question of equality among individuals, the question of equality of status among majority and minority groups in the Indian polity and society were also discussed. In this paper, then we look at the question of reservations as was discussed in the Constituent Assembly. But first, we look at the justifications for the quota system put forth in liberal political theory.

This would take two lines. One from the advocates of affirmative action programmes, who see this as a temporary measure to level the playing field of different groups, and which would be abolished after this goal had been reached, and secondly, from the point of view of the groups rights advocates who see this as a more or less permanent policy to ensure that even minority groups are given an equality of status with the majority group in any political community.

The modern state is based on the principle of equality among individual citizens. The idea of moral equality of individuals is an abstract notion, without

any specific conception of what it amounts to. With the commitment to the idea of the abstract moral equality among all individuals by virtue of their common humanity or their potential capacity to feel pain or pleasure, the modern liberal state guarantees a set of equal rights to its individual citizens. Rights at their minimal level are a principle of non-interference in the individual's sphere of action. These rights include some political and civil rights like the right to certain liberties. One provision under the right to equality is the right to equality of opportunity.

Critics of affirmative action programmes argue that these programmes are by their very nature a violation of the commitment to the principle of equality of opportunity, which is a difference-blind principle, and is opposed to any advantages that flow to individuals from membership in groups. Equality of opportunity is required by the commitment to the notion of the abstract moral equality of persons, notwithstanding differences in class, race, sex and other contingent features, and demands equality in the distribution of certain goods and opportunities.

While there is widespread agreement that equality of opportunity is a requirement in a just society, there is a great deal of disagreement over what this requirement actually amounts to. As Alan H. Goldman argues, "An opportunity is a chance to attain some goal or obtain some benefit. More precisely, it is the lack of some obstacle or obstacles to the attainment of some goal or benefit. Opportunities are equal in some specified or understood sense when persons face roughly the same obstacle or obstacles of roughly the same difficulty of

some specified or understood sort.” (Goldman 1987 : 88) Equality of opportunity is a necessary condition for individuals coming to deserve the positions that they occupy, and the benefits that accrue to these positions.

The initial formulation of the right to equality of opportunity was to eschew any advantages that flowed from hereditary privileges in societies based on hierarchical divisions. Thus, it sought to establish the principle that people's fate is determined by their choice, and not by their circumstances. What this means is that variations between people in terms of their resources could arise as a result of their choice, which would be a reflection of different tastes, beliefs and preferences. These are the person's own responsibility under the conditions of free choice and adequate information about the costs and consequences of these choices. However, it is not right to hold people responsible for the differences that arise from people's circumstances, their social environment or natural environment. So it is wrong to penalize people for differences which are beyond their control. It is to compensate for differences among individuals which are beyond their control that affirmative action programmes are sought as part of policy making. Thus, the system of reservations is seen as an ameliorative measure which is required to level the playing ground for individuals of different communities. So, is this system of reservations which seeks to provide special treatment for individuals of certain groups violative of the right to equality ?

Ronald Dworkin in an important essay “Reverse Discrimination” argued that far from being violative of the right to equality, reverse discrimination was in

fact required by the commitment to the very ideal of a more equal society. (Dworkin 1977 : 223-239) Dworkin's argument for reverse discrimination is an argument important for political philosophers and lawyers. So, what is the justification behind this provision ?

Dworkin's defence of reverse discrimination is set with reference to the De Funis case of 1971 in the US. De Funis, a white Jew argued that reverse discrimination which discriminated in favour of blacks and other marginalized groups was a violation of his right to equality. In spite of his possessing better grades than members of the favoured group, De Funis was denied admission in a law school. So, he argued that his right to equality had been violated. In the course of his justification of reverse discrimination, Dworkin raises some important questions about what the right to equality means.

The right to equality is the core principle of liberalism. This commitment to equality could be explicated as the right to be treated equally, and the right to be treated as an equal.

The right to be treated equally means being administered similar treatment or being given an equal distribution of goods and opportunities. In a democracy, for example, it would mean the principle of 1 person, 1 vote.

The second principle is the right to be treated as an equal. This does not demand an equal distribution of goods. Rather, it is the demand to be treated with the same respect and concern as anyone else. This is the constitutive principle or the core of the right to equality. This means that if "A" is in greater

need of a good than "B", then "A" should be supplied with it. So, "A" is given special treatment ie, a greater share of the good.

The first principle ie equal distribution is contingent on the importance of the good in question. While equal distribution of certain goods might be required by the principles of liberal democracy, relative deprivation or other such disadvantage might entail that the disadvantaged be given greater shares of the same resource. Thus, reverse discrimination in favour of marginalized sections might in fact be required by the right to treat people as equals. So, there is no one rigid conception of equality as similar treatment. Rather, a commitment to the principle of equality might sometimes demand special treatment for the disadvantaged sections.

Is there anything paradoxical in the idea that an individual's right to equal protection might sometimes conflict with an otherwise desirable social policy, including the policy of making the community more equal overall? No, not necessarily. Creating a more equal society would be part of state policy, and is a desirable goal, even if its members prefer inequality. So reverse discrimination programmes are required by the goal to create a more equal society, overall, to level the playing ground for different individuals.

Equality of opportunity is supposed to operate as a difference-blind principle, non-discrimination principle, that eschews discriminations based on ascriptive identities and the like. It is an important value in a society where a high value is placed on the individual, especially on individual achievement. So

how does one accommodate the entry of ascriptive or group identities into the public-political realm ?

Sometimes, it might be incumbent to base certain remedial programmes to promote greater equality in society on racial classifications. This is important when members of a particular race have been subject to systematic discrimination and prejudices in the past.

Thus, all racial classifications that take an individual's racial membership into account are not arbitrary. Reverse discrimination in favour of blacks in the US or for members of the scheduled castes and scheduled tribes in India was justified because they were the victims of past prejudices, slavery and racial segregation. However, any discrimination against individuals of these groups is unjustified because it is insulting and invidious. Therefore, it is not true to say that any policy is unjust if those whom it puts at a disadvantage feel insulted. Rather, the important question here is whether this feeling of insult is produced by some more objective feature that would disqualify the policy even if the insult were not felt. (Dworkin 1977 :236-238) Thus, any form of segregation that disadvantages blacks is automatically an insult to them when such segregation deprives them of their right to be treated as equals.

This commitment to the ideal of promoting a more equal society is grounded on the argument that a more equal society is a better society even if its members prefer inequality. Thus, this is a liberal argument that disavows the utilitarian commitment to equality by according equal weightage to each person's preferences. This goal of a more equal society is compatible with

everyone's right to be treated as an equal himself, ie the right to equal concern and respect from the state. The yard-stick for measuring the fairness of any state policy is not whether racial or intellectual criteria are taken into account. Rather, the fairness of any policy is checked by seeing how far it adheres to the commitment to respect the right of all members of the community to be treated as equals, ie as entitled to equal concern and respect. The earlier suspicion of racial classifications was because in the past they were used to deny rather than to respect the right to equality.

Thus, what emerges from Dworkin's argument is not that all racial classifications are arbitrary. Rather, some might be needed by the commitment to treat people as equals, and we have to be sensitive to the intent behind these racial classifications. Dworkin is, therefore, opposed to the operation of difference-blind provisions of the right to equality when it does not take into cognisance past injustices and prejudices against certain groups. It is important to stress here that social justice is not consistent with a blanket prohibition on the use of group categories as a basis for state action. Thus, reverse discrimination programmes would seem to level the playing ground for individuals who find themselves in different circumstances that is not a result of their choice.

Reverse discrimination programmes could also be justified on the grounds of social advantage or of social utility. They could have a trickle down effect whereby the members of the worst-off group may gain in self-esteem because other members of the group they identify with have the jobs, or they may get

material benefits from those members who now have the jobs. (Haksar 1998: 11-12)

The argument from the point of view of the discriminated against group is not as strong as the argument against standard racial discrimination. Let us take the case of the whites in the US or the upper castes in India. The self-esteem of these groups is not endangered by this policy. They are already in a socially dominant position, and this situation necessitating reverse discrimination arises only because of their general social dominance, and the socially and educationally backward status of the blacks. Moreover, affirmative action and reverse discrimination policies aim at benefitting the worst-off group, not at excluding the better-off group. It is true that the interests of some are being sacrificed to further the interests of others. However, it is the better placed whose interests are being sacrificed, and the worst off who are being helped.

Yes, affirmative action programmes diverge from a meritocratic system. However, this is justified because these policies are devised to favour groups whose social position is exceptionally disadvantaged, and which therefore, has destructive consequences both for the self-esteem of members of the group as well as for the cohesion of society.

We started with the question whether reverse discrimination was a violation of the right to equality. Through Dworkin's argument, we see that a commitment to the principle of equality might necessitate reverse discrimination. Equality is not limited to the operation of provisions for similar treatment. Rather, the disadvantaged and the marginalized in any society need special treatment if

they are to be respected as equals. Reverse discrimination and affirmative action programmes are justified as response to oppression, backwardness or systemic disadvantage. So, they are seen as a temporary measure that would eventually lead to a society where the need for such such measures would not be felt anymore. Thus, these programmes aim at removing the oppression and disadvantage to arrive at a situation where these programmes would not be required any more. On this then rests the argument for reverse discrimination.

The second argument for quotas or special representation rights comes from group rights advocates. A group right is a right possessed by a group as single unified integral entity qua other groups. Assertions of group rights are important because they are often based upon a conception of a group as an entity with a distinct identity and life of its own which others must recognise and respect. In some ways this argument is similar to a notion of respect that is owed to persons because they are persons. Group rights could be considered important because they are important for the well-being of its members. Group rights could be directed outwards, ie. as claims upon or against other groups or individuals external to the group, or they could be directed inwards, ie. towards the members of the group itself. Thus, group rights could also be considered as rights held by a group collectively against its individual members. (Jones 1994 : 186) In the case of rights to special representation or reservation that we are concerned with here in this paper, our attention is directed primarily towards those rights that a group holds against other groups and individuals, ie. those rights that are directed outwards.

Why should group rights that stress on group difference matter to us ? In contemporary liberal theory, there is a great deal of work being done to stress why membership in groups matters to individuals. Will Kymlicka and Joseph Raz have argued for a recognition of group rights to sustain group difference, from the stand-point of the liberal commitment to freedom and autonomy of individuals. Kymlicka argues that people become free in a particular culture. If we don't respect these different cultures, then the importance liberals attach to free and individual choice is undermined. As Kymlicka says, "human freedom and personality are tied to membership in a culture." If we are concerned about protecting those conditions in which individuals can exercise their autonomy, then we are obliged to recognise an individual's membership in cultural groups. (Kymlicka 1989; 1995)

Raz argues that in a multi-cultural society, there is a necessary plurality of virtues and values. It is not possible to combine them into a single life. He gives an example to show this. No single person can embody in himself or herself the crucial qualities that make a good chairperson, which include the ability to reconcile different points of view, with the eminently desirable attribute of an advocate, which include single-minded dedication to a cause. (quoted in Phillips 1995 : 17) Thus, diversity has to be represented, and this is demanded not just because of the requirement of political stability. Rather, "it reflects a more humbling recognition that no one group has a monopoly on virtue."(Phillips 1995: 17)

The cultural context is important for both Kymlicka and Raz. For Kymlicka, it is important because it makes options available to people, and appeals to this as a basis for group-differentiated rights that will help preserve threatened minorities. Raz argues that "individual freedom and prosperity depend on full and unimpeded membership in a respected and flourishing cultural group." (Raz 1986 : 72)

So, membership in a cultural group is important from the point of view of the individual. It is also important that this identity be given recognition. Let us take a multi-cultural situation, where there is a majority group and a minority group, a condition of difference between groups based on ascriptive identities. In a liberal democracy, all differences are considered to be reducible to differences in ideas, values, and opinions among individuals, all reducible to individual claims. These differences were sought to be accommodated by a system of equal civil and political rights.

This being so, the state would be neutral to differences among its citizens. The goal of the state would be to free people from differences in the public domain and to equalize all members in their political capacity as citizens, independently from the particular human beings they are. Differences are basically treated as if they are matters of choice. So ascriptive identities are not recognised. Moreover, the problems arising from social differences, like ethnic, linguistic, and sexual are ignored. (Galeotti 1993: 590) This is demanded by the liberal commitment to the principle of toleration, which seeks the peaceful

coexistence of irreconcilable differences by the difference-blind principle in the public-political realm.

Group rights advocates, on the other hand, are demanding that differences among individuals based on their ascriptive identities also be recognised. This is required more so in a situation where there is a disparity between majority and minority groups. This group inequality matters, because it is sometimes the external manifestation of the oppression of individuals based on their group identity. Minority groups might argue that equal rights, equal opportunities, and equal treatments are not enough for formal citizenship does not capture the demand for the public recognition of collective identities. For a disadvantaged minority, legal recognition of equal citizenship might not be enough. So special representation rights are demanded as a way to assert the collective identity of a minority group. This debate has been labelled as “the equality versus difference” debate. However, this tag is inappropriate for the difference party advocates a different, comprehensive view of equality and rejects only the ideal of equality as sameness or likeness. (Galeotti 1993 : 595) Equal citizenship rights are not sufficient in a situation where there are different groups, and some are not on an equal footing with other citizens.

Special representation rights, which demand a recognition are often demanded by a commitment to the principle of equality. As Kymlicka quoting the Canadian Supreme Court decision says, “the accomodation of difference is the essence of true equality.” (Group-Differentiated Citizenship : 154) What is demanded here is equality of respect. Denial of recognition often amounts to

oppression and marginalization, and it is a blow to the self-esteem of the discriminated against group.

In a multi-cultural context, the executive or the legislative branches of government might be unrepresentative when they fail to represent the diversity of the population. It is here that group representation rights would be demanded as a response to some systemic barrier in the political process that makes it difficult for the minority group's interests to be effectively represented. (Kymlicka : 158) These rights are seen as permanent, and not as temporary unlike the affirmative action programmes.

Representation for oppressed groups is required not just by the principle of symbolic representation. Rather, this might be required also for the effect on the content of public policy. As Iris Marion Young argues, "A democratic public should provide for the effective recognition and representation of the distinct voices and perspectives of those of its constituent groups that are oppressed and disadvantaged, failing which the policy outcomes would merely reflect the preconceptions of the dominant groups. (Young 1990 : 184)

We now examine the Constituent Assembly debate on the question of reservations. In India, the policy of promoting greater equality overall has required that quotas or reservations be accepted. In the case of employment in government jobs and services, the constitution has only enabling provisions for reservation, but legislatures have extensively created caste quotas, and these have been accepted in general by the courts. This question of reservations has been an extremely contentious issue in contemporary Indian society and politics,

and the purpose of our paper here is to look at the justifications for reservations that were put forth in the Constituent Assembly Debates.

In the Constituent Assembly, with regard to the claims of the minorities and the backward classes, reservation was sought in three branches of the government : representation in the legislatures (joint versus separate electorates and weightage), representation in the cabinet, and representation in the services. (Report of the Minority Rights Subcommittee, 27th August 1947). Eventually, the Advisory Committee on Fundamental Rights, Minorities, and Tribal and Excluded Areas in its meeting on the 11th of May 1949 submitted its proposals to the President of the Constituent Assembly. The committee recommended that reservations for minorities should be abolished except for the Scheduled Castes and the Scheduled Tribes. It was recognised that the peculiar situation of the Scheduled Castes would make it necessary to give them reservation for a period of ten years. Our concern in this paper is to look at the debate on reservation in the services as compatible with or violative of the right to equality of opportunity.

This question of reservations was added to the equality of opportunity in government employment, and it was the most contentious of all the equality clauses, and had strong defendants as well as opponents. The right to equality of opportunity is an important clause of liberal democratic societies, and is based on the non-discrimination principle. In multi-cultural societies, ethnic, racial and religious discrimination is often a serious problem. However, in an ideal multicultural situation, all persons should be fully able to participate in their

cultural or religious sub-group, without their status as full citizens being hampered in any way.

The equality of opportunity clause includes two kinds of provisions : first, legal non-discrimination and secondly, affirmative action programmes such as the provision for reservations for backward classes in the Indian constitution. This paper seeks to look into the Constituent Assembly debates to see in what spirit and for what reasons reservations were sought to be introduced and how they were sought to be accommodated within the broad framework of promoting equality as a policy.

The Equality of Employment Opportunity in public services was incorporated as Article 16 of the constitution. It was first and foremost a non-discrimination clause that ensured that no citizen would be discriminated against in respect of any employment or office under the State on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them. This clause does not prevent the State, like other employers, to pick and choose from a number of candidates, either for appointment or for promotion on the grounds of efficiency, discipline and the like. It then seeks to accommodate demands for protective discrimination, which reads "Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State". Though reservation in favour of backward classes is permissible under Clause (4) of Article 16, no such reservation is possible in favour of women, nor is any other

discrimination in favour of women possible, eg relaxation of rules of recruitment or standard of qualification or the like.

This provision for reservation was in the nature of a safeguard for minorities and backward classes, though ambiguity prevailed and the debates continued over who the actual beneficiaries of this provision should be, and arguments hinged in favour of reservations for both the minorities and the backward classes.

The first question that arose in the Assembly was whether the system of reservations wasn't violative of the principle of equality of opportunity that sought to reward individuals on the basis of their ability and merit. Wouldn't it be violative of the principle of efficiency which is based on a meritocratic system ?

This clause on reservations was opposed by Loknath Mishra who suggested the deletion of this clause, and who argued that this system of reservations was unnecessary because it put a premium on backwardness and inefficiency. Thus, if grounds other than merit were taken into account in recruiting people into the government services, then one was putting a premium on inefficiency. Conceding that the right to employment, food, clothing and shelter could be a right for everybody, he said that it was not a fundamental right of any citizen to claim a portion of state employment which ought to go by merit alone. (CAD VII : 673)

Similarly Damodar Swarup Seth argued that merit and qualification should be the only consideration for appointment to posts. Necessary facilities and concessions could be given to backward classes for improving their educational

qualifications and for raising their general level of living. Thus, the argument here is that people's life chances should be equalized by means other than reservations. (CAD VII : 679)

Here a policy of promoting more equality in society is seen as being better served by means other than reservations. This argument against reservation is not an argument against levelling the playing field for the members of different groups in society. Rather, it questions whether the system of reservations is the appropriate way to do this. It seeks equality of environment or equality of life-prospects by ensuring to citizens access to education, health, and other such basic necessities. Thus, this argument is against positive discrimination as a form of promoting equality.

Moreover, this opposition to reservations was further continued along the lines of the degradation of the beneficiaries themselves. Interestingly, this argument too is based on a particular conception of equality whereby the system of reservation though seen as an act of generosity on the part of the state and of those discriminated against, was in fact a form of degradation of the beneficiaries themselves. This is because it is felt that this practice would not be very beneficial to the self-esteem of those in the favoured group, who could have attained their positions even in the absence of this policy, but who cannot now be sure that they are not among its beneficiaries.

These arguments against reservation are in some ways founded on a particular conception of equality. While arguing against this system of giving competitive advantage to the backward classes, there is definitely an important

argument for focussing on a different conception of equality, and this is argument for initiating a certain level of equality of condition. Seeking to establish a minimal equality of condition whereby the essential needs of citizens could be taken care of, there is a justification or a demand to include welfare rights, such as the right to food, clothing and shelter in the constitution. Thus, when Damodar Swarup Seth is arguing that necessary facilities be provided to raise the educational qualifications of the backward classes, his argument is that the depressed classes be raised to an equal footing as other classes for the unimpeded operation of the right to equality of opportunity.

While these arguments questioned the efficacy of reservations as an ameliorative measure, others argued for a strict time limit for the operation of this provision, for without such a specified time limit, the government would rest content that it had given the backward classes their due. Hriday Nath Kunzru argued that the system of reservations operate for a specified time period only, and not beyond that. If there was no specific time limit, then the mere provision of this system would be seen as an adequate provision for the uplift of the backward classes. Thus, he called for a periodic review of the system of reservations. (CAD VII : 679)

How did the advocates of the system of reservations respond to these criticisms? How was reservation argued for then from the point of view of equality ? We will now enter the debates to see how reservations were justified from a point of view of equality. While in reservation for government jobs, only the claims of the Scheduled Castes and the Scheduled Tribes were accepted as

being eligible for the provision of reservations, the claims of minority groups for reservations were nonetheless a strong, and sometimes moving one.

Which groups need reservation and for what reasons ?

This has been an important question among contemporary liberals. The demand for group representation could escalate into a never-ending demand for political recognition and support. There is also the fear that there could be bitter resentment among groups whose demands are denied. So what should be the grounds on which quotas or special representation rights are sought by a group?

Iris Marion Young identified five forms of oppression that any group could suffer from. These were : exploitation, marginalization, powerlessness, cultural imperialism, random violence and harassment motivated by group hatred or fear. To quote her, "Once we are clear that the principle of group representation refers only to oppressed social groups, then the fear of an unworkable proliferation of group representation should dissipate." (Quoted in Kymlicka 1995 : 145) There is a danger that these criteria could possibly proliferate into an unworkable number of demands for the representation of groups or sub-groups. Kymlicka recognises this as a formidable problem, though he says that there is some experience on this issue of identifying disadvantaged groups on the basis of affirmative action programmes. (1995 : 146)

The framers of the constitution recognised that this was a major problem of identifying which groups should have representation in the government services. There were demands both on the grounds of social backwardness as well as on the grounds of a group's status as a minority.

The Indian Constitution makes provisions of reservations only for the backward classes. However, backward classes is not defined anywhere in the constitution. It was not clear how a particular class would be categorised as a backward class. Would it be on the basis of class or caste? Economic or Ascriptive? Members of the Constituent Assembly felt that this term was itself a very vague and indefinite term, and demanded that this should be defined so that there are no disputes in the future.

In reply to this demand, Ambedkar replied, "Any one who reads the language of the draft itself will find that we have left it to be determined by each local government. A backward community is a community which is backward in the opinion of the Government." (Shiva Rao 1968 : 200)

"Backward classes" was interpreted as "those classes that are at present unable to look after themselves unaided." (Hriday Nath Kunzru, CAD VII : 679) While there was general agreement that this group would include the Scheduled Castes and Scheduled Tribes, there were questions about who else would be included in this group. What were the grounds of providing reservation in favour of the depressed classes like the Harijans?

Here, the justification was that this was an important measure for the rectification of past injustices and inequalities, past neglect and acts of omission. Arguing spiritedly for the provision of reservation for Harijans, Munniswamy Pillai said that the case for this rested not on the grounds of representation of Harijans as a group. Thus, the demand was not that they be granted reservations because they formed a group, and their group interests be

recognised. Rather, the argument was that they had been left behind other groups due to their lack of social, economic and educational advancement. The minority status of the Harijans was not because they were a small community in terms of numbers. Rather, the issue here was that Harijans, though one sixth of the population, had not been given their due share in the administration of the country. They had been excluded from offices of power in earlier times, and reservations were seen as an effective power-sharing device in the country, so as to enable the previously left out groups a share in the effective opportunities to exercise power in the country. Unless there was an assurance that these communities would at all times be taken into account, and given enough and more chances in appointments, their uplift would stand still. (CAD VII : 688-689)

Thus, the social and educational backwardness of this community entitled them to reserved seats in government jobs. In response to arguments that reservations were a negation of the meritocratic system, P. Kakkan conceded that though this was so, the demand for justice and for the uplift of the Harijans made it necessary to accept this deviation. Thus, adherence to the meritocratic system would impede the Harijans from coming forward. So, he said, "The Government can expect necessary qualifications or personality from the Harijans, but not merit. If you take merit alone into account, the Harijans cannot come forward." (CAD VII : 688-689)

Reservation for the scheduled castes and backward tribes was demanded by the egalitarian principle. Equal rights of citizenship are not enough when the parties concerned are on an unequal footing. Thus, special privileges for some classes were required so that real equality of citizens could

be established. So any special privileges in the field of education or employment opportunities demanded for these classes should not be regarded as violating the basic principle of equality for all classes of citizens in the country.

Should the claims of the minorities also be taken into account in making reservations in the government services ?

This question of reservation for the minorities was widely discussed, for there were general fears that this provision for minorities might lead to the rise of communalism in the country, for it would assert group difference.

The claims of the minorities for reservation could be recognised only on the ground that they were backward. In a political community, it is only fair that any class, whether backward or minority, be given protection only on the ground that it is backward and if left to itself would be unable to protect its interests. (Hriday Nath Kunzru, CAD VII, 679) Thus, a minority as such was eligible for reservation only on the grounds that it was backward.

The use of the term "backward" was opposed by Aziz Ahmad Khan who argued that "only those people require protection who have misgivings that in case protection is not given, their rights will not be preserved". (CAD VII, 681) Here, representation in the government services was seen as a form of protection, a safeguard to the minorities that their interests would be looked after. If the minorities did not get representation in the government services, there was a fear that their rights would not be preserved. Thus, the minorities have a claim to reservation of seats in government jobs. This provision would be a safeguard

to the minorities that their claims had also been looked into. Moreover, this safeguard would also assure the minorities that their existence and their claims had not been ignored. Thus, what emerges from this is a demand that reservation be expanded to the minorities as well, and not be limited only to the backward classes among the majority community. This is a demand for group representation to ensure the protection and the preservation of the interests of a particular group.

Mohammad Ismail Sahib demanded that there were backward sub-groups within the minority groups as well, and so reservation should be extended to these groups as well. Thus, this provision should be made for the minority communities, too. (CAD VII, 693)

While the rights of common citizenship like the right to equality of opportunity were important, what was demanded was also public recognition of a minority group's identity. Something more than an equal citizenship right is demanded. Thus,

"If we are to fill up these posts by open competition and merit, certainly we cannot give recognition to the claims of all minorities. Then the best men would be taken in and if some members of the minorities do happen to succeed, that would not be on the consideration of their claims as minorities but that would be under article 10 as equal citizens of the State. If they get those posts in open competition, it is all right; but if they are not adequately represented by that method, then what article 296 implies is, that special consideration shall be shown to them to see that their representation is made up." (Sardar Hukam

Singh, 694, Volume VII) (296—Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments”)

Thus, there is a demand that the individual identity be recognised as composed by cultural and religious groups, as well, and this has to be publicly recognised, and asserted. An individual's identity as a member of a minority community is as important as his identity as a citizen of a political community, and this has to be recognised. A failure to recognise this would amount to oppression, for you are thereby denying it equality of status with the majority or the dominant community in the public sphere.

What is at stake here is not just the question of symbolic representation as a form of recognition of a minority group. Rather, and probably more importantly, what is at issue here is the question of access to effective power in the government so that in policy making, minority claims are also taken into account. So here the focus is not merely on who decides, but also on the outcome of the decision. The question here is how the claims of these groups are reflected finally in the outcome on policy as well.

There was another demand that the intermediate castes too be included among the beneficiaries of the system of reservations. The intermediate castes were not untouchables, had not been subjected to that level of oppression, and were in a better position than other communities from the economic and

educational point of view, and were not a religious minority. Yet, reservation in government jobs was sought. Why ?

This is because an effective share in government was important if the community was to have an equality of status with other communities in a political community. Thus, the numerical strength of a community or its general level of educational and social pre-eminence were immaterial if it was denied access to power, and did not have representation in the branches of government.

Here what is demanded is that every community have representation in governmental bodies, for this would ensure equality of status among the various groups in a political community. The absence of representation of certain groups or communities in policy making bodies is a grave problem, for this reduces them to the status of political minors, cared for by those who know best.(Phillips 1994 : 39) Thus, political representation matters as an avenue for challenging the existing hierarchies of power, and the goal here, at least partially, is to achieve the necessary inclusion : "to reverse previous histories of exclusion and the way these constituted certain kinds of people as less suited to govern the rest." (Phillips 1994 : 40) This representation has more than symbolic value, for there is also an assumption that this measure would alter the direction of policy or the content of the decisions made.

Thus, in a democracy that accepts a responsibility for redressing disadvantage and aims at securing social justice, it is important that the marginalized and the disadvantaged also be seen as the appropriate people to carry this through. (Phillips 1994 : 44) Arguing for "a politics of presence", Anne

Phillips focuses on the impact of such representation on policy-making as well. Thus, in policy making and implementation, new problems and issues could emerge, and in this process, it can matter immensely who the representatives are. If the disadvantaged group is under-represented at the point of final decision, this is fraught with severe consequences. So, in spite of binding mandates, representatives matter because often they enjoy considerable autonomy. Moreover, the claims and demands of the under-represented group might be unformulated, overlooked or ignored if they are not at first drawn into the political process at all. Thus, "It is only when people are more consistently present in the process of working out alternatives that they have much chance of challenging dominant conventions. The argument for a more equitable distribution of representative positions is very much bound up with this." (Phillips 1994 : 45)

An important critique of affirmative action and special representation rights is that while they might aim at a policy of greater equality among individuals and groups, they are a source of disunity in society, and they inhibit the development of a sense of shared identity of common citizenship. This could threaten the unity of the political community, because it asserts that citizens are different from one another because of their ethnic or religious group. Thus, this measure could in effect hamper the promotion of a common identity among citizens.

Similar fears were expressed in the Constituent Assembly. Wouldn't this system promote casteism and favouritism in the country ? Wouldn't it lead to

individuals of a particular group clustering around their own selfish interests to the detriment and neglect of the larger Indian polity ? Wouldn't the demands of the minorities raise the communal bogey ? Wouldn't it lead to a proliferation of special representation rights from various diverse groups in society ? Such fears were understandable in the aftermath of the Partition of 1947, for there was then a genuine desire to preserve a multi-religious, multi-ethnic and multi-cultural political community. So there were fears expressed that reservations, based as they were on ascriptive identities would perpetuate divisions and disharmony among individual citizens of the country. This system of representation was based on the differences among individuals, based on their ascriptive identities. Wasn't this form of differentiated citizenship violative of the rights of common citizenship that perform the vital function of integration ?

Here the argument for reservation and special representation is addressed as necessitated by a desire of the previously marginalized and oppressed groups for participation and inclusion in the political process. Those groups that felt that they were marginalised or excluded from the political process wanted to be part of the broader political society. Thus, the basic impulse underlying representation rights was "integration, not separation." (Kymlicka – Paper entitled Three Forms of Group Differentiated Citizenship in Canada). Rather, representation and this system of reservations were seen as a means to bring about "a unity of hearts", for mere physical unity would not suffice for the good of the country. So, this demand for reservation was seen as an attempt by the marginalized sections of the Indian polity and society to participate in the

governance of the country, a demand for participating in its affairs, and for sharing power in the country, while preserving their own identity. To quote Mohamed Ismail Sahib,

“When we speak of reservations and rights and privileges, the bogey of communalism is being raised. Sir, communalism does not come in because people want their rights. When people find that they are not adequately represented, they rightly feel that they must have due representation and then such a demand comes up. It comes because of their non-representation in the services, and because of their discontent. When such discontent is removed, the unity of hearts comes in. It is the unity of hearts and not any attempt at a physical unity that will do good to the country and to the people, The differences will be there, but there must be harmony and that is what we all really want, and that harmony can be brought about only by creating contentment amongst the people. And reservation in services is one of the measures we can adopt to bring about contentment amongst the people. You can then say to the people, “Look here, you have your proper share in the services and you have nothing to complain.” When people themselves find that they are given as good an opportunity as others, harmony will be there and the so-called communalism will not come in at all. Therefore, I say that one of the ways of removing disharmony and producing harmony, is to make provision for the people’s representation in the services and to make them feel that they have got a real share and an effective share in the governance of the country.” (CAD VII 693)

Now, there is a recognition that individual identity is seen as constituted by cultural and religious groups. There is not a rejection of abstract individualism, rather a recognition that differences among individual citizens of a country on account of their ascriptive identities would persist and could not be gotten rid of. Thus, what is asserted here is that "identity-based politics already exists; that it is hardly relevant whether we approve it, for it is here whether we like it or not." (Phillips 1994 : 23) Rather, in a polity one has to accept the persistence of such differences, and devise means to deal with this. Thus, what was asserted was a demand for recognition, and for equality of status among different communities. It was important that the minorities and other marginalized sections feel that they have a real share and an effective share in the governance of the country.

In the Constituent Assembly debates on the question of reservations there was an important argument where equality was justified not just as a value for the individual citizen. Thus, when there is talk of equality as a value for "the good of the country", this is an argument from the point of view of the political community as a whole. K. T. Shah too argued for equality as a value for the community as a whole. To quote him,

"Any section of the community which is backward must necessarily impede the progress of the rest; and it is only in the interest of the community itself, therefore, that it is but right and proper we should provide facilities so that they may be brought up-to-date so to say and the uniform progress of all to be forwarded." (CAD VII : 655)

Thus, this argument is based around the necessity for a strong, harmonious and integrated political community, which is seen as an important justification for reservation. This is a strong communitarian argument whereby equality among individual groups and among individuals is needed for the sake of preserving and strengthening the community. This argument seems quite similar in some ways to communal egalitarianism, which is founded on Rousseauian thought. Amy Gutmann discusses this in her book, "Liberal Egalitarianism". (1980 : 219-221).

Communal egalitarianism is different from liberal egalitarianism, for while liberal egalitarianism is characterized by arguments for a more equal distribution of primary goods based upon the interests of individual citizens, characterized as equal, communal egalitarians believe that equality should be viewed as being good not for individual citizens as such. Rather, equality is viewed as a good for society taken as a whole, independently of how equality will be a good for individual citizens. An individual's interest cannot precede an understanding of what constitutes a desirable political community. To quote Amy Gutmann on communal egalitarians, "Equality is considered a primary value insofar as it is constitutive of a fraternal social order, regardless of whether fraternity is in the interest of all individual citizens." (1980 : 219). This argument relies on the idea that it is desirable to establish a community within which people are equally dependent, upon the state, rather than upon private individuals. In the Rousseauian ideal, the primary concern is to create a social or a political order whereby all the people so concerned rule equally and possess relatively equal

amounts of primary goods. For Rousseau, the participatory aspect of equality was more important than the distributive aspect. Strict equality of political participation was required because without it some people would be subservient to the political will of others. Thus, there would be a certain degree of servitude of those who do not participate. This would prevent the establishment of a fraternal society. Therefore, these arguments for equality as envisaged through the system of reservations are also strong arguments for a healthy body politic, and equality is seen as a value essential for the establishment of a healthy political community.

Thus, this is an argument where the ultimate justification for equality is based not on a distributive principle of one individual against the other. Rather, in this case the argument is on the preservation and the cultivation of a healthy body politic, or a healthy political community.

K. M. Munshi's contention was that this provision within the equality of opportunity clause was an attempt to secure two values : the highest efficiency in the services of the country, and the expansion of opportunities to the really backward classes of Indian society. Thus, for this the state services were particularly important because they gave a status and an opportunity to serve the country, and this should be extended to every community even among the backward classes.

Ambedkar justified these provisions on the grounds, among others, that these were the result of demands by certain communities that the monopoly of one community or a few communities should be ended, and that others should

also have a chance of getting into the public services. Thus, the system of reservation would expand political participation in the country.

Should group representation and reservation based on the principle of affirmative action be our primary concern then in making appointments to jobs if we are to be firm in our commitment to equality ? Supposing, for instance, reservations were made for a community or collection of communities, the total of which came to something like 70% of the total jobs under the State and only 30 % are retained as unreserved. Is this satisfactory to give effect to the equality of employment opportunity clause ? (Ambedkar, CAD VII : 701)

No, Ambedkar said. The reservation of seats could only be for a minority of seats. If reservation was fully conceded, then the principle of equality of opportunity would be deemed destroyed. Thus, equality of opportunity was the core principle around which the protective discrimination or reservation clause had to be accommodated.

Another important question that was discussed in this regard was that of a specific time period for the operation of this clause. Should reservations and special representation rights be seen as a permanent measure or as a temporary measure ?

Most people saw this as a temporary measure. When the members of the backward classes, whichever groups these may be, are on an equal footing with the members of other groups in society, then and only then will reservations disappear, for their very purpose would then be questioned. The goal embedded in this scheme was to fully integrate the country, and establish

equality of status so that no community or class would then be tempted to claim this provision for itself. As Sardar Patel addressing the question of reservation for the Scheduled Caste members of the Sikh community said,

“Now our object is, or the object of this House should be, as soon as possible and as rapidly as possible to drop these classifications and differences and bring all to a level of equality. Therefore, although temporarily we may recognize this, it is up to the majority community to create by its generosity a sense of confidence in the minorities; and so also it will be the duty of the minority communities to forget the past and to reflect on what the country has suffered due to the sense of fairness which the foreigner thought was necessary to keep the balance between community and community.” (CAD, VIII : 269-72)

What emerges from the discussions of one group in the Constituent Assembly is that reservations were quite compatible with the principle of equality of opportunity. This provision was not against the equality of opportunity clause, but rather seemed to be required by it to ameliorate conditions of backwardness and injustice. The assertion by Chandrika Ram that true equality of opportunity would be secured only when there was provision for reservation of seats for the backward castes would seem to illustrate the above point. In this interpretation, true equality is seen not as the right to equal distribution of some good or opportunity, but rather, as the right to equal concern and respect from the state (Dworkin 1978 :12 3)

Article 16 and the attendant clause on reservation sought to strike a mid-way between the claims of the individual as guaranteed by the right to equality of

For the members of the Constituent Assembly, the concern with treating citizens as equals, then was the ultimate justification for the system of reservations, and this was not violative of the right to equality of opportunity, and seemed rather to be required by it.

opportunity as well as those of groups that were backward or had a minority status, and so were not on an equal footing with other groups in society. (Ambedkar, CAD VII, 702) This was an attempt to combine the interests of groups with those of individuals.

Several conceptions of equality emerged from this debate on reservations in the Constituent Assembly. Arguments for reservations to promote equality as an end-state principle took several lines. Reservations were justified on the grounds of equality among individuals, among groups, and moreover, as a value for the community as a whole. There are sometimes overlapping, sometimes conflicting conceptions of equality emerging here. For the members of the Constituent Assembly as a whole, reservations were seen as compatible with equality of opportunity. If reservations ultimately seek to level the playing field, is this secured better by providing for a right to equality of environment? In the next chapter, we will examine debates in the Constituent Assembly that argued that citizens were entitled to a right to equality of condition in the form of a welfare right against the state.

Dworkin says,

“Racial criteria are not necessarily the right standards for deciding which applicants should be accepted by law schools. But neither are intellectual criteria, nor indeed, any other set of criteria. The fairness – and constitutionality – of any admissions program must be tested in the same way. It is justified if it serves a proper policy that respects the right of all members of the community to be treated as equals, but not otherwise.” (Dworkin 1977 : 239)

CHAPTER III

EQUALITY -- A RIGHT TO WELL-BEING ?

Should the right to equality also include the right to the equal fulfilment of certain basic needs in the form of welfare rights ? This was a very contentious issue among the framers of the Constitution, for the question that is being raised here is whether equality in the political and legal fields suffices without a certain degree of equality in the satisfaction of basic needs in the economic field. In fact despite the repeated avowal of a commitment to equality and to uplifting the worst-off groups in Indian society, the absence of any effective rights to material well-being and to the satisfaction of basic needs is quite glaring. Before we enter the Constituent Assembly debates to look at the justifications for having constitutional rights to material well-being, we look at the arguments within liberal political theory for welfare rights which seek to establish a minimal equality of condition in the Constituent Assembly debates.

While liberals are all unequivocally committed to the idea of equal political and civil rights, the issue of welfare rights has been a contentious issue, for some feel that welfare rights which entail some redistributive measures clash with civil and political rights, more specifically the the right to property and so are unacceptable. Yet the question of the denial of certain basic needs to fellow citizens is not a very comfortable one, for it is not always by consequence of a conscious and rational choice that people find themselves without even the most basic necessities for physical well-being, such as food, health and shelter, and so it is that some liberals make a strong, and sometimes a moving case for welfare

rights. This paper seeks to look at some of these arguments that defendants of welfare rights put forth.

The liberal individual is a rational and free person, who is equal with all other individuals by virtue of his common humanity. Amidst this interplay of conflict and cooperation among individuals when they enter civil and political society by the social contract, liberals introduce the notion of equal rights – civil and political for these persons to safeguard a sphere of non-interference for the person to follow his own conception of the good. What is important here is also the idea of a distinction between the abstract and the accidental. Thus, for liberals generally, notwithstanding any social differences of wealth or status or any biological differences of ability or strength, as citizens we should be treated the same. And whatever the differences, they should not be allowed to matter, and equal civil and political rights seemed to be sufficient to guarantee the abstract moral equality of persons, so that they could follow their own conception of the good.

But does the above hold in the light of existing inequalities in the economic and social sphere, where some persons are denied even the basic minimal requisite to achieve physical well-being ? Socialists and Marxists critiqued liberalism on its seeming ignorance of how existing inequalities in effect translated into inequities in the exercise of civil and political rights. The equal right to vote does not guarantee an equal distribution of power, for access to political influence is often shaped by the distribution of wealth. As liberals tried to grapple with such uncomfortable questions, there were strong cases made for

redistributive schemes, and the minimal point of this was the provision of certain basic needs to those deprived of it. Thus, should the provision of basic needs be part of the obligation of the state ? Do citizens have the right to claim welfare services ? Is there a case for need-based or welfare rights ?

But first, what is a need ? The satisfaction of a need is crucial to a person's well-being. Needs have an objective quality about them, and so are different from wants and preferences which are subjective, and could differ from person to person. Moreover, it is possible to identify at least some of what a person needs without consulting the person who has those needs (Jones 1994 : 148-156) Thus, we know that all human beings need food, water and air. Since needs have an objective quality about them, it is possible to identify certain needs which are universal to human beings, and can therefore provide a foundation for universal rights.

The second feature of needs particularly relevant for rights is that claims of need have a greater normative force than expressions of desire. Thus, needs carry a greater note of urgency than wants, and so they have a priority over wants. Needs are crucial to a person's well-being, something of a different order from her wants or her preferences, and something in which one has not merely an interest, but a vital interest. (Jones 1994 : 148).

Is this then a sufficient criterion for saying that people should have a right to what they need ?

A right, in its strong sense, is an entitlement, this being the special force behind a right. It is equivalent to being the possession of a title by the individual,

so that the individual becomes the locus of legal and moral concern. The ascription of rights is important because of the standing that they give to their holders. If all human beings possess rights merely by virtue of their being human, then they all possess a certain equality of moral standing that cuts across differences of class etc. Thus, this is the special moral force behind rights—the fact that they are in the nature of what individuals are entitled to.

Are we then entitled to what we need? Is there a sufficient claim for need-based or welfare rights then?

A welfare right would require that each person be enabled to achieve a standard of living that is as nearly adequate to his basic needs as is possible, given the existing technology and the facts of the case. (Copp 1992 : 243)

Classical liberalism refused to recognise rights to well-being. Rights were basically seen as rights to freedom – ie as rights against others, who have correlative obligations not to interfere with our actions. Thus, classical liberalism recognised rights as implying a sphere of non-interference, rather than as rights to certain types of goods or services or rights to be in certain economic positions. (Peffer 1978 : 65)

While rights to freedom arise from a concern with or respect for a person's autonomy, rights to well-being arise from a concern for human welfare.

Defendants of welfare rights generally argue along the following lines.

A commitment to welfare rights is essential if we are to be serious in our commitment to any rights at all. The absence of the essentials for a healthy and active life would impede our enjoyment or exercise of any right at all. Things like

malnutrition and disease would adversely affect human faculties rendering the individual incapable of pursuing his plan of life. Moreover, if a right has the purpose of ensuring that a certain choice be made, then it is probably as important to facilitate the exercise of that choice, as it is not to obstruct it. (Waldron 1993 : 579). In this sense, the provision of medical and educational services might be as important to enable individuals to exercise choice, as it is to remove obstructions in the exercise of this choice.

The second argument for welfare rights says that socioeconomic needs are as important as any other interests. If we believe that an individual is entitled to dignity and respect merely by virtue of his being a human being, then it is important for us to address the question of his physical well-being also. As Waldron puts it in very severe terms,

“Though we may be worried about the proliferation of rights claims, it is by no means clear that demands for welfare should be the ones to give way. Disease, death, malnutrition and exposure are as much matters of concern as any denials of political or civil liberty. Where such predicaments are avoidable, a refusal to address them is an evident insult to human dignity and a failure to take seriously the unconditional worth of each person.” (1993 : 579)

Thus, need-based rights are usually justified along two lines – first, of an instrumental nature to facilitate the exercise of other rights, and secondly, as ends in themselves, related as they are to the physical well-being of persons, and so to their dignity as persons.

There is another argument for welfare rights that sees them as social contract rights. Since a just state would satisfy the rights that people have against it, a welfare right would be required by the principle of social justice. (Copp 1992 : 231) Thus, these rights are said to accrue to all individuals by virtue of their being members of a particular society at a particular time. Welfare rights are then rights that a citizen has that a just society given its concrete conditions of production deems us to have. (Copp 1992 : 65) These rights are ascribed to individuals not by virtue of their being persons. Rather, given the principles of distributive justice and other such basic principles in a society, they are rights guaranteed by the particular society in which we live.

Welfare rights, along with the rights to freedom could be derived from the concept of human worth. The equal worth of all human beings regardless of their merit is an important moral concept for us, and this underlies concepts of justice and equality. If individuals are all of equal intrinsic worth, then one man's well-being matters as much as another's and one man's freedom is as valuable as another's. Therefore, one man's prima facie right to well-being is equal to that of any other. From this, one can derive specific rights of both kinds. From the equal right to well-being, specific rights like the right to education, medical care could be derived.

Theoretically, how would we locate welfare rights within the framework of a liberal state ? Amy Gutmann (*Liberal Equality*) and Frank Michelmann (*Constitutional Rights and A Theory of Justice*) attempt to do so by locating welfare rights within the Rawlsian framework. Gutmann relies on the notions of

“fair value of liberty” or “basic effective liberty” and of the “original person” as risk-averse agents to arrive at the provision of welfare rights within the liberal framework.(1980 : 120). Her argument also provides a justification for welfare rights by focussing on the equalization of basic effective liberty being a requisite in an ideal society. Before proceeding further in our discussion on the issue of welfare rights, we look at Gutmann’s revision of the Rawlsian principles of justice that seeks to incorporate welfare and elevate it to the status of a right, with a corresponding obligation of the state.

Gutmann starts by looking at the purpose of the original position. The original position is an important contribution of Rawls to contemporary liberal theory. The purpose behind the original position is that original men rather than actual people are being asked to stipulate what their interests are, and they are forced to choose distributive principles based upon those goods that can reasonably be expected to desire in order to fulfill the particular life-plans once this veil of ignorance is removed. The original men are rational and risk-averse agents, and in this state they arrive at two principles of justice, which are applicable to advanced industrial countries, and these principles will have to be altered in economically underdeveloped or non-ideal political situations.

These two principles of distributive justice, as revised by Gutmann with principle 1 prior to the second are –

1. Principle 1 states the distribution of such liberty to each as is consistent with a like liberty for all .

2. Social and economic inequalities are to be arranged so that they are both (1.) to the greatest benefit of the least advantaged (2.) attached to offices and positions open to all under conditions of fair equality of opportunity.

Gutmann says that though it is not a very well-developed argument in Rawls, there is a suggestion that the attempt to equalize all liberties prior to primary good distribution in a society in which most or some do not have a minimum standard of living would be to misconstrue the intent of the liberal commitment to equal freedom. Moreover, there is also an argument for the fair value of liberty such that a minimal level of primary goods distribution must be achieved before the equal liberty principle is recognized as a prior concern of rational individuals. In addition, in advanced industrial countries, the original position sanctions the equalization of the fair value of liberty as far as is consistent with equal formal rights and the interests of the least advantaged.

Thus, Rawls attempts to equalize formal or negative liberty such as civil and political rights with a radically egalitarian stance of maximising the worth or the positive side of liberty to the worst off in any given society.

For Rawls, liberty is represented by the complete system of the liberties of equal citizenship, while the worth of liberty to persons and groups is proportional to their capacity to advance their ends within the framework the system defines. The end of social justice in the Rawlsian framework is to maximise the worth to the least advantaged of the complete scheme of equal liberty shared by all. Therefore, the Rawlsian scheme has equality as its

base line, and an unequal distribution is justified only if it will maximise benefits to the least advantaged within that society.

Gutmann then stresses on the risk aversion character of the original men when they are choosing their basic life chances. Apart from formal rights and liberties, certain basic human goods and services are pre requisites to the free and enjoyable use of not only all other goods but of basic liberties as well. These goods which are essential to one's very ability to pursue a life plan include education and job training, housing and employment , medical care and health services. Gutmann says that the first two pairs are recognised in the fair equality of opportunity principle which also suggests that medical care and legal services are to be distributed according to need, rather than according to the difference principle. (1980: 120-128)

The "original persons" being both rational and risk-averse agents, would take into account legal and medical care needs which might frequently require large amounts of money at unpredictable times in people's life-times. So, rather than agreeing to the distribution of all income and wealth in liquid form according to the difference principle, they would be more likely to provide for distributing services in kind, or for providing payments tied to the satisfaction of medical and legal needs. Thus, the distribution of medical and legal services according to need would be a more rational decision from the perspective of the original position. There is in Rawls then a suggestion for the equal treatment of objectively determined needs in addition to the

guarantee of equal civil and political liberties, to equalize self-respect among citizens and to guarantee a basic minimum level of individual liberty.

In this sense, welfare rights would be co-ordinate to the first principle of equal liberty to secure basic effective liberty to all people. Basic effective liberty is the product of formal liberties and basic welfare rights, which would be necessary to enable a person to follow his plan of life. Thus, according to Gutmann, the equal distribution of economic goods and services pinpoints to the normal welfare state within a Rawlsian system. By the difference principle, on the other hand, justice would be expanded beyond the welfare state to a more egalitarian system of distribution.

Then, distributive justice by Rawls's theory is sub-divided into two egalitarian spheres.

1. A distribution of basic human services in which some version of equal treatment of needs operates.
2. A distribution of residual goods (presumably in the form of money) in which a principle of equal shares to individuals (qualified in the interest of the least advantaged) operates.

Since the fulfillment of needs by basic welfare rights is more urgent, the first egalitarian principle will be prior to the second within broad limits. While conceding that the specificities of welfare rights would nevertheless remain open, Gutmann asserts that barring extreme cases, it remains rational for original persons to accept the risk of moderately lower income prospects in exchange for the certainty that their health will be protected and maintained at all but

outrageous cost to society. Gutmann also argues that the revised first principle that guarantees basic effective liberty is preferable to Rawls's first principle that guarantees formal liberties, for by making basic effective liberty a right, there is also a recognition of welfare as a right. Gutmann goes quite far in elevating welfare to the status of a right, for as she says :

“Were we to derive a theory of obligation from this revised liberal egalitarianism, we would be likely to endorse the right to civil disobedience perhaps even to revolution for those citizens who are denied their basic welfare rights. I say “likely” because I shall not attempt here to derive a theory of obligation from this revised version of liberal egalitarianism.” (Gutmann 1980 : 128)

Thus, Gutmann locates welfare rights within a revised Rawlsian framework by giving priority to basic effective liberty “which is a product of formal liberties and welfare rights, agreed to by rational risk-averse agents.

The question of welfare rights has a very controversial one among liberals. Apart from disagreements about the relative indeterminacy of basic needs, and about the substantive content of welfare rights, the most important critique of welfare rights has been that they are a form of compulsion, and are tantamount to the slavery and forced labour of some for the sake of others. In this context, the libertarian critique of welfare rights has been a powerful one, and here we will look at Nozick's argument welfare rights.

While libertarians have no problems with voluntary charity, and giving resources to the poor, what irks them is compelling some to pay for others'

needs. Libertarians would say that the the welfare state with its apparatus of compulsory contribution obstructs private charitable activity. Nozick in *Anarchy, State and Utopia* equates taxing a man's income or wealth to provide for the needy with forced labour, slavery and other forms of inter-personal aggression.

While philanthropy and charity are laudable, the idea of welfare rights is not. As I have an inviolable right over my body that may not be violated even when doing so would benefit others, I have a similar right in relation to external objects by processes of appropriate and voluntary transfer. The rights of individuals constrain any goals or aims of welfare through forced redistribution. Therefore, no government, no matter how democratic it is can appropriate the property of its subjects for charitable purposes if the subjects would use it for something else. Thus, for Nozick and other libertarians there are simply no rights to welfare that could possibly be regarded as being in conflict or in competition with the property rights in question.

Defendants of welfare rights like Waldron respond to this argument by adopting a different image of charity as reflected in the case of a welfare state. Waldron in *Welfare and the Images of Charity* distinguishes between active and passive charity. One image of charity would be "putting oneself out, actively intervening for someone else's benefit." (1986 : 470-471). In this case, when one refuses to be charitable, then it is a mere omission, a passive refusal to intervene. Thus, if I see a starving man on the road and I give him some food to eat, I am actively intervening. Being charitable here implies active intervention.

On the other hand, being uncharitable would mean refraining from giving food, ie. Merely a passive refusal to intervene.

The second image of charity might merely be a matter of forbearance. Waldron explains this by saying that

“Charity, as we noted earlier, involves giving, but giving the exercise of the power of alienation of one’s property need not involve any active or onerous expenditure of effort....To give you something, I do not have to put myself out for your sake or come actively to your assistance. The airiest waiver of my property rights is quite sufficient.” (1986 : 472)

It is important to fulfill one particular condition for charitable giving to be merely a matter of forbearance and it is that the recipient of the charity should be capable of helping himself. The only thing that stands between the potential recipient and the use of the resources in question is then the former’s respect for the property rights of the potential donor. This argument for the welfare state would be more easily applied to the issue of welfarist redistribution than to the issue of the provision of welfare services, yet it is important as a starting point for thinking about the legitimacy of compulsory charity.

On the second model of charity, then while charity means mere forbearance, and consists simply in passively allowing another to help himself to the resources that one has, refusing to be charitable means the withholding of this forbearance. The uncharitable act then would be an act of intervention, the positive assertion of one’s rights, in a situation where someone else is helping himself to one’s goods. Being uncharitable, on this model, then means stopping

someone from doing something, rather than merely failing to assist him. In response to Nozick, Waldron says that charity in the second image far from being forced slavery is enforced idleness.

Thus, if someone makes use of my resources, then I am charitable merely by refraining from preventing him from using them. Does a welfare provision amount to coercion? If one takes the first model of charity, then enforcing charity would be simple coercion. That is we force someone to do something that he would not otherwise do. Even though we use force in a morally desirable cause, the fact remains that in the enforcement of charity, we are resorting to the first introduction of force, which is a cause of concern to the liberal, as Kant holds that force is presumptively illegitimate and can be used legitimately only against illegitimate coercion. On the second model, the enforcement of charity does not amount to the first introduction of force, but is rather a response to the coercion involved in the refusal to be charitable. But doesn't making use of another's property amount to coercion?

Though this might reduce the options for action open to the owner, it does not amount to coercion. While the user of such property might violate the property rights of the owner, any violation of rights is not coercion. Some violations of rights might amount to coercion, but definitely not all. So, when one is uncharitable in the second sense, that is when one resorts to coercion against someone making use of his property, then he is making the first introduction of coercion, which is illegitimate, and therefore, we can legitimately resort to the use of coercion in "enforcing charity".

Waldron then goes on to qualify this above principle, for as it stands now, it is too wide and expansive, and would prohibit the use of force against anyone who was making any use of any resource, except those who were actually coercing other people in the process, and this would undermine the whole idea of property, which is not the point of the matter here. Rather, the crux of his argument is “to prohibit the use of force to uphold property rights specifically in cases of abject need rather than a blunt principle prohibiting all use of force in relation to resources and therefore precluding the possibility of any theory of property rights at all.” He states this in the form of his principle (Q) –

“Nobody should be permitted ever to use force to prevent another man from satisfying his very basic needs in circumstances where there seems to be no other way of satisfying them.” (1986 : 476) While this argument has been made more specific and has to be fleshed out, how could it be justified ?

There are two ways of justifying it. One would be to say that it is intuitively extremely inhuman and vulgar to use force to stop a person from doing what is necessary to prevent his own death or abject debilitation. The other argument is contractarian in character, and says that a rule or a prohibition is excluded if it could not have been agreed to in advance in good faith by those who are subject to it. Moreover, it is also limited or qualified to the extent that those who are to be bound by it could not have given a bona fide undertaking to adhere to it in an unqualified form. The rules of property would be similarly bound by the above principle. So a man who is starving would be impelled to consume a glass of milk which is physically available to him. It is quite absurd to assume that he

would agree to such rules which require that even when he is dying, he refrain from consuming that glass of milk. Therefore, principle Q could be based on a contractarian argument, that it is unthinkable that any person would agree to an absolute unqualified right to property in all circumstances.

Principle Q, however, does not translate into a free-for-all welfare state which allows the needy to resort to helping themselves to the property of those better off than themselves, for this would result in societal disorder and chaos. Rather, the welfare state recognizes Principle Q in another way. It tries to prevent the situation in Principle Q from ever emerging by making provisions for a minimum guaranteed subsistence for everyone. It is a pre-emptive measure that seeks to ensure that nobody would ever violate another's property rights, because he is in such abject need. This could also be stated as, "the welfare state provides us with an assurance that if somebody is violating property rules, abject need is most probably not his motive." (1986 : 478-479) This then provides us with an assurance that if somebody is violating property rules, then we can resort to force without violating principle Q. So we know that when A is robbing a bank, he is not doing it out of desperate need. That there was an alternative available to him, that he did not have to interfere with another's property rights.

Thus, in a welfare state, we do not constrain the enforcement of property rights. We do limit property rights, but that is by redistributive taxation which would ensure a minimum subsistence to all, such that Principle Q is not violated. By refusing to pay the welfare tax required to provide basic minimum

subsistence to all, a person refuses to uphold Principle Q. Because this principle is a principle about the use of social force, then his refusal to support it is a proper subject for coercion, and we are then justified in forcing him to be charitable.

Thus, by making use of the second model of charity as passive forbearance from the enforcement of property rights, Waldron arrives at the justification of the provision of some welfare provisions by the state. In doing so, he is also responding to the libertarian critique that welfare provisions by the state are inherently a form of coercion for the donor. Thus, in this, he seeks to establish that some compulsory welfare provision may be morally justifiable.

In one of his later works, Waldron arguing for welfare rights responds to Nozick's critique of such rights. He argues against what he says is the libertarian assumption that needs-based-rights occupy a relatively superficial role in a general theory of economic entitlement – as though we first determine who owns what, and then determine what to do about the needs that are left unsatisfied. (1994 : 579) Rather, needs should determine the rightful distribution of resources amongst a population. Thus, welfare rights would instead of being the basis of a duty of compulsory charity call existing property arrangements into question. Welfare rights might even entail an overhaul of the existing property system. Similarly, Jones too argues that the emphasis on the duty-imposing character of needs is often misleading and needs-based-rights should be seen as rights to and over a set of resources, rather than as rights against others. (Jones 1994 :164)

One way of responding to arguments that assume need-based are impractical and expensive would be say that they stem from an assumption that the existing distribution is to remain undisturbed. Moreover, the refusal to acknowledge welfare rights sometimes shows the absence of a will to implement welfare provisions, rather than a genuine inability to do so.

Welfare rights attack the atomistic conception of individual rights whereby the purpose of rights is seen as guaranteeing for the individual the right to a sphere of non-interference from the state and other individuals. If a right is seen only as a protective device for a self-sufficient individual, and not also as an enabling injunction to assist a mutually dependent cooperative individual, it will reflect an ideology of conflict in which people are potentially hostile to each other. (Michael Freedman 1991: 55) On the other hand, welfare rights demand action on the part of other individuals in society, and such action is demanded specifically in order to secure an acceptable standard of well-being. On this view, there is an assumption that individuals cannot function without the cooperation of others, and so membership of a society is itself a fundamental that demands protection. Society might sometimes have to intervene to ensure the well-being of its members, and the denial of such intervention when needed by the individual was harmful to him.

We will now examine the Constituent Assembly Debates to see on what grounds welfare rights that seek to ensure a minimal equality of condition to all citizens were argued for. The notion of citizen's welfare is amenable to two different, though often overlapping ideas : (i.) material assistance to individuals

in need, or (ii.) a fair redistribution of the resources available in a society. These two are not identical, and often one may fall short of the other. (Freedman 1991 : 50) There is a difference between arguing that individuals have a right to a fair share of available resources, and that they have a right against the state to the fulfillment of their basic needs. My concern in this paper is primarily with the question of trying to secure to the individual a right to the fulfillment of his basic needs. So, discussions around the right to property, and the attendant compensation in case of appropriation by the state are not dealt with in detail here. Rather, my concern here is to enter the Constituent Assembly Debates to examine the case made by the framers of the Constitution for securing to each individual citizen the right to the fulfillment of his basic needs.

When the constitution was being adopted by the Constituent Assembly on 25 November 1949, Dr. B. R. Ambedkar remarked on the contradictory nature of the provisions in the new Constitution that was being adopted. To quote him, "We must begin by acknowledging the fact that there is complete absence of two things in Indian society. One of them is equality. On the social plane, we have in India a society based on the principle of graded inequality which means elevation for some and degradation for others. On the economic plane, we have a society in which there are some who have immense wealth as against many who live in abject poverty. On the 26th of January, 1950 we are going to enter into a life of contradictions. In politics we will have equality and in the social and economic life we will have inequality. In politics we will be recognising the principle of one man, one vote and one vote, one value. In our social and

economic life, we shall, by reason of our social and economic structure continue to deny the principle of one man, one value. How long shall we continue to live this life of contradictions ? How long shall we continue to deny it for long ? We will do so only by putting our political democracy in peril. We must remove this contradiction at the earliest possible moment or else those who suffer from inequality will blow up the structure of political democracy which the Assembly has so laboriously built up." (Volume XI, 979).

This statement is a reflection of the opinions of some members of the Constituent Assembly who felt some amount of frustration at the absence of adequate provisions to grant a certain minimal level of equality of condition in the form of justiciable rights in the provisions of the Constitution. By 1947, it was a commonly accepted belief among Indian leaders influenced by the ideas of Marx, Laski and the Webbs that the state bore a major responsibility for the welfare of its citizens. This question of equality of material welfare was a recurrent theme throughout the proceedings of the Constituent Assembly from December 1946 to December 1949, for this was intimately connected with the provisions demanding justice as enunciated in the Objectives Resolution and in the Preamble to the Constitution. Thus, though the preamble to the Constitution guaranteed "Justice, social, economic, and political, Liberty of thought, expression, belief, faith and worship; Equality of status and opportunity; and to promote among them all Fraternity assuring the dignity of the individual and the Nation;" it was not enforceable, and these words did not have the mandatory effect that was demanded of them. (Dutta Gupta :32) So eventually, in spite of

the commitment to social and economic justice, this could not be realized in the form of justiciable constitutional welfare rights. Thus, in spite of a commitment to equality several times over, what was granted in the constitution was only political and legal equality in the form of the formal right to equality and the adoption of the democratic principle of universal adult franchise.

We now enter the Constituent Assembly Debates on the issue of welfare rights, which seek to establish a minimal equality of condition for the citizens of the country. Welfare rights are need-based rights, and in this paper, we will look at the question of whether individuals as such are entitled to welfare provisions from the state.

At the outset it should be mentioned that although Fundamental Rights and Directive Principles of State Policy appear in the Constitution as distinct entities, it was the Assembly that separated them. When the leaders of the Independence movement were drawing up the lists of rights, they often did not distinguish between positive and negative rights. The All Parties' Conference (1928) adopted a list of fundamental rights that had a provision entitling every citizen to free elementary education, health care, a living wage for every worker, the welfare of children and provision of assistance in old age, infirmity and unemployment. The Declaration of Fundamental Rights, adopted by the Indian National Congress in 1931 also had similar provisions for the welfare of citizens. It also said specifically that "in order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions", and that the organization of economic life must conform to the

principles of justice. (Shiva Rao, SD I : 321) Thus, the obligations of the state in their scheme of affairs included right to material welfare, health, education etc.(Austin 1966 : 52) - positive rights that sought to enable each individual to realize himself to the best possible capacity.

The question of incorporating welfare rights into the list of Fundamental Rights was a contentious one. The major line of division was between those who argued that citizens had a right or an entitlement to welfare, and those others who argued that welfare provisions should merely serve as directives to the government of the day. The welfare provisions in the Indian Constitution are covered under Part IV of the constitution, ie in the part on the Directive Principles of State Policy which are the non-justiciable rights of the citizens. What was questioned in the Constituent Assembly was the division of rights into two distinct categories – justiciable and non-justiciable, an aspect inspired by the 1937 Irish Constitution. Thus, by this division, the Directive Principles of State Policy were expressly excluded from the purview of the courts.

When did the rupture between the Fundamental Rights and the Directive Principles come about ?

Initially, the Rights Sub-Committee did not aim to distinguish between welfare rights and liberty rights by putting them in separate categories. However, gradually as these negative rights were being drafted, it was realized that some rights were more susceptible to court enforcement than others. Thus, those rights that guaranteed an area of non-interference were considered to be susceptible to court enforcement. (Austin 1966 : 79) Thus, by the 27th of

March, the sub-committee had come to the conclusion that the clauses relating to welfare provisions could not be incorporated into the list of Fundamental Rights.

On the 30th of March 1947, welfare provisions were discussed by the sub-committee. After the addition of a few more provisions into the list of the Directive Principles of State Policy, a preamble was added to define the position to be accorded to these welfare provisions,

“The principles of social policy set forth in this Part are intended for the general guidance of the appropriate Legislatures and Governments in India (hereinafter called collectively as the State). The application of these principles in legislation and administration shall be the care of the State and shall not be cognizable by any court.” After a few changes, this was incorporated into the draft report of the sub-committee. (Shiva Rao 1968 : 322)

The Objectives Resolution of the CA talked of promoting justice in the social, economic and political sphere. This was stretched by some members to argue that citizens have an entitlement to welfare that is required fundamentally by the notion of economic justice. Ironically, in spite of several declarations of a commitment to welfare, the only economic right included in the list of Fundamental Rights was the right to property, a right that classical liberals and libertarians view as an inalienable right of the individual citizen.

When the DPSPs were put forward for deliberation in the Assembly, the question of a citizen's entitlement to welfare came up almost immediately. The main issue was whether welfare provisions could legitimately be given the status of rights, or should they merely be in the nature of precepts and have the

character of the directive principles of state policy ? Thus, should these welfare provisions be justiciable in courts ?

When Ambedkar introduced the Draft Constitution in the Assembly on the 4th of November 1948, in response to criticisms that the Directive Principles of State Policy were useless because they lacked the binding force of law, he said :

“The inclusion of such instructions in a constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these Instruments of Instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a court of law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realized better when the forces of right contrive to capture power.” (CAD, VII : 41-2)

These principles of state policy were thus, considered to be positive obligations of the state, though without the corresponding rights of the individual to these material goods. Rather, as we shall see in the course of this paper, the moral principle contracting the state and the democratic principle of the

accountability of the governors to the governed would make it necessary that the state fulfill these positive obligations to the individual citizens.

When representatives are engaged in a process of deliberation over the future constitution of a country, how would a case for providing for citizen's entitlement to welfare arise ?

This question was raised by RK Sidhwa (CAD V : 365) who said that the deliberation among the various members of the Constituent Assembly who come from different classes might make the introduction of welfare provisions and of distributive justice difficult. People come from different classes, so they have different interests, and embedded as they are in their class and group identities, it might be difficult for them to agree unanimously on providing welfare rights. However, some kind of an agreement had to be worked out among the members to ensure certain welfare provisions to the citizens. Thus, in the process of deliberation, and transformation and not aggregation of preferences among representatives, there was an attempt to arrive at certain welfare provisions within the Indian Constitution.

Welfare rights were sought to be justified along the lines of a contractarian argument. A contractarian argument is one which suggests a position that the parties to the original contract would have agreed to. Along the contractarian line, a rule or position is excluded if it could not have been agreed to in advance in good faith by those who are to be subject to it, and it is limited or qualified to the extent that those who are bound by it could not have given a bona fide undertaking to abide by it in its unqualified form. Moreover, this argument would

say that the principle of justice requires that citizens have the right to a certain minimal level of material welfare.

Critiquing the non-recognition of welfare rights as fundamental rights, several persons referred to the incorporation of welfare rights into DPSPs as pious wishes, lacking the force attendant with a fundamental right. K. T. Shah in a letter to B. N. Rau said that the distinction between the justiciable and the non-justiciable rights would result in the non-justiciable rights being treated merely as pious wishes. He took the case of the right to employment which was a non-justiciable right. Yet it could be made a genuine right of the citizen if the state was obliged to provide useful work for every citizen who was able and qualified. Then the state would be obliged to develop a comprehensive plan to ensure to every citizen of the country the right to maintain a given standard of living. (Shiva Rao, SD II :153-154)

The use of the prefix "Directive" before Principles was said to mean two things: that these principles would not be binding on the state and that they would not be enforceable in a court of law. There were many demands that "Directive" be replaced by "Fundamental" so that these principles could be made mandatory obligations of the state, and not be as meaningless as they seemed to be. (Kazi Syed Karimuddin, H. V. Kamath, CAD VII : 473-4) Without making these mandatory duties of the state, they would merely be an expression of some vague desire on the part of the framers that if and when circumstances permit, conditions allow, we may do this or that or the third thing. There was

nothing mandatory or compulsory for the state to implement these provisions.
(K.T.Shah,CAD VII 479)

The right to welfare was linked to the emergence of the state, and the provision of welfare functions was made the primary task of the state. Mahavir Tyagi argued that the primary duty of the state and its government was not the maintenance of law and order. A state's functions are not the functions of policing. Rather, the state comes up for the promotion of the welfare of the people. To quote him,

"If a government cannot do it (promote the welfare of the people), we do not want that government. If a State cannot do it, of what use is that State to us? The function of a State is taken to be only the maintenance of law and order by means of the army and the police. We do not want a police state. In fact, all order and tranquility which reigns over mankind is not the effect of any government in the world. Its origin lies in the principles of society. Order would remain intact, even if the formality of having Governments had been done away with. The desire to associate is an instinctive feature of man, and so the credit for the peace and tranquility of the world goes to the individuals who make up the society. The first and foremost duty of a Government is to promote the welfare of the people. That is why governments are there. If a government cannot do this, they should have the honesty to move out and give place to others." (CAD VII, 493)

The promotion of welfare was the primary task of government, and in drawing up a democratic constitution, this issue of a citizen's entitlement to

welfare has to be given expression to. Thus, the position taken here is a critique of the minimal state which has only the negative functions of maintaining law and order. Rather, something more is being demanded from the state, and this is the positive obligation of providing for the welfare of its citizens. The state is founded on the principle of providing for the welfare of its citizens, and so it should perform this task.

Therefore, the question of welfare rights was firmly embedded in the question of the emergence of the state. Every modern government had to avow a commitment to provide for the basic minimal level of life of its citizens. A modern state would be ashamed not to own its commitment to these goals. (P. S. Deshmukh, CAD V, 370) Citizens were entitled to welfare, and this entitlement came from their being parties to the contract that would lead to the establishment of the state. By recognising that the state in effect consists of people from various different classes, the necessity of welfare rights is further emphasized. For if the framers of the Constitution are the representatives of the people, they will have to take into the account the well-being of the worst-off in society as well. So, they will have to make provisions for a citizen's entitlement to welfare. In a just social and political order, a basic commitment to providing the right to equality of material condition would be agreed to by the citizens.

Those who argued along this line for the incorporation of socioeconomic rights into the list of Fundamental Rights said that it was obligatory for the state to provide for the welfare of the citizens. Thus, if we draw up a democratic constitution, the state serves the people, and the people, the state. There is a

reciprocity of obligations between the state and society. This line of argument provided for a greater role for the state, other than the task of the maintenance of law and order. Citizens' entitlement to welfare imposed certain obligations on the state – a positive role for the state to intervene to promote the well-being of individuals.

Another argument for welfare rights came from P.S. Deshmukh . The purpose behind a fundamental right was protection of “the life, liberty and comfort of an average man.... against possible oppression either by a monarch or by some body of people who can get into the government.” However, oppression was not limited to merely political and civil oppression. Rather, the lack of certain basic necessities, poverty, ignorance and illiteracy too were a form of oppression. Poverty too was a form of oppression for it would impose some constraints on the individual, and prevent him from realizing himself fully. Thus, if a right was a guarantee against an oppression, then it is quite legitimate that welfare rights too would serve as some kind of a guarantee against oppression. Welfare rights were important rights to enable every human being to rise to the highest status in life, and to provide him with the facilities to do so. Thus, welfare had to be in the nature of an entitlement of the citizen. (CAD V II

Those who took this line of argument for welfare-as-entitlements to basic goods argued against charity. Charity was bad because it led to the degradation of the recipient, and would prevent the poor from rising up. Dependence on charity would amount to a negation of the principle of equality. Moreover, implicit in charity was a certain degree of self-aggrandisement by the donors.

Rather, instead of making citizens' welfare dependent on the voluntary will of the donor, every citizen's entitlement to welfare had be taken cognisance of.

Thus, "The first basic principle of our constitution should be that the poor man should have full right to rise to the highest station in life; he should have the facilities to do so, not out of somebody's compassion, but by his own strength and the assistance of society." (Vishwambhar Dayal Tripathi, V : 374)

Here a right is seen not as safeguarding a sphere of non-interference for the individual, into which other individuals and the state are not allowed to enter. Thus, in this argument there is a recognition that the intervention and assistance of society might be needed to protect an individual's physical and mental well-being. This is then an argument against an atomistic conception of individuals in society which assumes that the activities of society are potentially a threat to the individual. Against this argument, communitarians and liberal egalitarians recognise that mutual dependence among individuals is required in a social structure. Thus, it is not right to say that an individual always benefits from the non-intervention of society. Rather, non-intervention when it is required could eventually harm an individual's well-being.

Apart from contractarian arguments for the incorporation of welfare rights, there was a communitarian argument. Introducing the notion of a family wage, Rev. Jerome D'Souza argued that the head of every family was entitled to a family wage, which would not be in accordance with the strict principle of remuneration for labour done according to the laws of a liberal economy. Rather, it was obligatory for society to provide this family wage to the head because the

family is one of the most important elements in the organisation of the community, and this is the maintenance to which he has a right, partly independently of whatever work he does.

Why should the head of a family be entitled to a family wage which would ensure the physical well-being of its members ?

"Now, the primary unit of society, one whose limits and characteristics are fixed by nature itself, is the family. The varieties and forms of external civil society may vary and change, but the limits, and characteristics, the fundamental features of the family, are fixed by nature. And it is within the bosom of the family that the social virtues, on the basis of which we are making this Constitution, and the firmness of which will be responsible for the carrying out of the Constitution, those fundamental virtues are developed and most lastingly founded in the family circle – mutual regard, mutual dependence, respect for authority and order, foresight and planning, and even the capacity for negotiating with other units, – qualities which would be required on a wider scale and in a wider theatre in our political and public life.Therefore, I feel that this house will not reject this plea that in some form our respect and love for family traditions, may be reflected in the Constitution." (Rev. Jerome D'Souza, CAD VII, 514)

The above argument that demands a family wage values equality ultimately not as an important distributive principle for the individual. Rather, the community is of value here, and it is for the sake of maintaining and preserving the community that an entitlement to welfare is sought by the head of

the family. The state is thus obliged to pay this family wage to the head of every family to ensure the stability of the community.

Therefore, arguments for welfare rights which would be "the full right of the poor man to rise to the highest status in life" were carried along both the communitarian and contractarian lives. The non-incorporation of these rights as fundamental rights into the constitution was critiqued. By denying these welfare rights, the only rights that the worst-off had were the formal rights to political and legal equality.

While there was general agreement that the state had some welfare functions in society, the question was whether citizens have a corresponding right against the state to demand the performance of these functions. Should citizens be entitled to demand welfare from the state ?

Eventually, the Constituent Assembly members decided that a commitment to providing for a Fundamental Right to Welfare was not an easy task. Granville Austin's great optimism that the Indian Constitution was an attempt "to foster the achievement of many goals, the most important of these being that of social revolution" was belied. Austin wrote that through this revolution, not only would the basic needs of the common man be fulfilled, but rather, a fundamental change in Indian society would also be initiated. The core of this social revolution, he wrote, lay in the Fundamental Rights and the Directive Principles of State Policy, which formed "the conscience of the Constitution". (1966 : 50)

Shobhanlal Dutta Gupta critiques Austin's optimism, and says that Austin fails to see that none of the Fundamental Rights in the Constitution guaranteed the right to equality in the true substantive economic sense. Thus, the only substantive economic right legally guaranteed by in the Constitution was the Right to Property, while all other rights were reduced to provisions, guaranteeable in the procedural sense only. (Dutta Gupta 1979 : 66)

The debate on welfare rights centres around the question of what the sphere of rights should be ? Some members of the Constituent Assembly emphasized the positive role of an interventionist state to secure socioeconomic justice. Thus, rights in this sense would involve the positive role of the state in the socio-economic sphere, and not merely a non-interventionist state. As K.T.Shah demanded ".....rights, it may be added, form the corresponding obligations of the State which guarantees them. Thus, for instance, the very basic Right to life or liberty requires that the State keep up sufficient machinery at its disposal to prevent any would be aggressor aiming at the life or liberty of anyone in the community." (quoted in Shiva Rao, SDII, 115) A positive correlation between the individuals rights and the duties of the state was sought to be established in those arguing for welfare rights.

In response to the criticisms about the non-inclusion of socio-economic rights into the list of Fundamental Rights, Ambedkar argued that though we were committed to the notion of an economic democracy, there were differences of opinion about how to bring it about. Thus, there was no agreement on the question of distributive justice. There were different and divergent points of

view among the framers about the way in which economic democracy was to be realized. Therefore, there was plenty of room for people of different ways of thinking, with regard to the attainment of the ideal of economic democracy. The non-inclusion of welfare provisions as entitlements in the Constitution was justified by leaving the substantive content of an economic democracy open-ended. Since there were different conceptions of economic democracy, the question of welfare rights was left open-ended, and the Constitution did not avow any strong commitments on the question of welfare rights.

Welfare rights are important to secure equality of condition for every citizen in a state. The overwhelming concern was with equality of status. Equality of condition while recognised as important however did not have the legitimacy attached to a right. While protective discrimination based on ascriptive identities was justified on the grounds of equality of status, the question of differential treatment for the economically backward classes was not the issue there then. Economic backwardness does not figure as a criterion for an entitlement to protective discrimination. Thus, while the framers of the Constitution were willing to grant civil and political rights that guaranteed to the individual a certain degree of unimpeded space, they were unwilling to grant the citizen a right to well-being that would demand positive obligations from the state.

CONCLUSION

A SOCIAL REVOLUTION BELIED ?

The Constituent Assembly Debates form a vast corpus for the study of various concepts in political theory – for from it emerge various conceptions of concepts like equality, justice, democracy etc. This present work has sought to address only a miniscule part of the problems raised and addressed in the Constituent Assembly debates. The framers of the constitution were aiming at a comprehensive political, economic and social doctrine that would guide the young polity on the path to adopt. Some commentators on the Indian Constitution like Granville Austin have seen it as a social document seeking to bring about a social revolution in the social and economic fields. Others have seen in this a misplaced optimism on the ability of the state to carry forward this goal of a social revolution, for it did not go far enough in trying to change the status quo. Thus, while the Constitution has adequate provisions to establish social and legal equality by the right to equality before law and the right to equality of opportunity, a right to economic equality even in the minimalist sense of providing for the satisfaction of basic needs was missing.

My concern in this paper has been to study some conceptions and questions raised with regard to the concept of equality. What emerges in the debates is that while equality in the political and social realms was acceptable, though different conceptions of it may emerge, the idea of economic equality even at a conceptual level was prone to many serious disagreements, as it was considered violative of the right to property, and an unattainable goal of the state.

The question of equality of material welfare was sought to be guaranteed by welfare provisions which did not form part of the Fundamental Rights. Thus, while equality of democratic citizenship was guaranteed by the rights to liberty and freedom, which sought to secure for the citizen an area of non-interference, positive rights in the form of rights to certain material goods were not within the purview of the Fundamental Rights.

While the welfare functions of the state were stressed upon, this did not translate into a corresponding right of the citizen to welfare. Welfare functions were thus to serve merely as precepts for the state to follow. This was justified on the grounds that there was no consensus on the form that an economic democracy would take. While the right to property was accepted as an important right of the individual, the right to well-being was not. So what was important for the members of the Constituent Assembly was the question of procedural equality as guaranteed by the right to equality of opportunity and the right to equality before law.

Thus, economic rights in the sense of a right to the fulfillment of basic minimal needs were not accepted by the Constitution, in spite of repeated avowals of the commitment to socialism and to economic equality. While welfare rights were one way of trying to rectify the disadvantaged circumstances in which individuals found themselves and for which they were not responsible, welfare provisions were not seen as something that citizens were entitled to.

The members of the Constituent Assembly discussed the question of reservations with regard to the right to equality of opportunity. Was this violative

of the right to equality of opportunity or was it required by the right to equality of opportunity ? With regard to the question of the right to equality, the Supreme Court of India said, "It is no longer necessary to emphasise that equality contemplated by the Constitution is secured not only when equals are treated equally but also when unequals are treated unequally. Conversely, when unequals are treated equally, the mandate of equality before law is breached. To bring about equality between unequals, therefore, it is necessary to adopt positive measures to abolish inequality. The equalizing measures will have to use the same tools by which inequality was introduced and perpetuated. Otherwise, equalisation will not be of the unequals." This is said to mean that if one is condemned because of his birth, reference to his birth will be necessary to correctly identify him for relief, otherwise we may give relief to someone else in his name. This is thus, a justification of basing the operation of the system of reservations on caste. (V.P. Singh, 20)

How has the policy of reservations functioned in real life ? The Indian Constitution has not defined the category of Backward Classes clearly, and it is an amorphous category, which has been subject to varying interpretations and manipulations. In some states, the prosperous castes have appropriated these categories for themselves, whereas in others, there are attempts to define this category so as to allow better prospects to less prosperous groups to benefit from educational and occupational opportunities.

Moreover, the quota system has not been fully utilized, and this is related to the material conditions of existence of the depressed classes. The problem of

poverty and the denial of access to education and training facilities has hampered the operation of this policy. The policy of reservation is seen as an attempt to level the playing field for the members of different classes. So how far have reservations succeeded in levelling the playing field among members of the same disadvantage group ?

Affirmative action programmes and welfare rights are two devices by which the question of equalising unequal circumstances was sought to be resolved. While the Constituent Assembly accepted the policy of reservations, and incorporated it into the Constitution, this was seen as a temporary provision to be abolished once the playing field for individuals in unequal circumstances had been resolved. On the whole the policy of reservations was seen as being compatible with the right to equality, for it originated from a commitment to the goal of treating individuals as equals.

The operation of the formal rights to equality is often hampered by the inequalities in the social and economic realms. Thus, the right to equality of opportunity is meaningless to a man who has had no access to education facilities. He is a priori excluded from competing for the job for circumstances beyond his control. As Bernard Williams says to insist that everyone has a right though only some can secure it often rings hollow to the point of cynicism.

The commitment to equality notwithstanding, the Constituent Assembly members were thus, committed to equality in the legal and political sense only, leaving the question of economic equality inadequately dealt with in the Constitution. As Dr. Radhakrishnan said in the Constituent Assembly,

“There is also reference to fundamental rights in the Resolution. It is a socioeconomic revolution that we are attempting to bring about. It is therefore necessary that we must re-make the material conditions; but apart from re-making the material conditions, we have to safeguard the liberty of the human spirit. It is no good creating conditions of freedom without producing a sense of freedom. The mind of man must have full liberty to flower and mature and to grow to its fullest stature. The progress of man is due to the play of his mind, now creating, now destroying, always transmitting. We must safeguard the liberty of the human spirit against the encroachments of the state. While state regulation is necessary to improve economic conditions, it should not be done at the expense of the human spirit.” (CAD II, 273)

Thus, many members saw this question of providing for welfare a case of state intervention that could be detrimental to the liberty of individual citizens, as violating certain individual rights, and the problem is that some members placed the question of welfare rights within the liberty versus equality paradigm, whereby attempts to realize economic equality were seen as being necessarily violative of political and civil liberty -- i.e. the right to property.

While there are several conceptions of equality emerging from these debates, what seems to be the primary concern of the CA members is equality in the social realm, in particular the removal of untouchability. In a hierarchical society, the attempt to establish the right of every citizen to equal dignity and concern not just from the state but from other individuals as well is also an important task and cannot be belied. I think there was a genuine desire in spite

of all the grappling involved to ensure the basic right of every citizen to be treated as equals.

BIBLIOGRAPHY

The Constituent Assembly Debates I, II, III, IV, V, VIII, XII.

- Austin, G. (1966). *The Indian Constitution : Cornerstone of a Nation*. Clarendon Press. Oxford.
- Arneson, R. (1989). 'Equality and Equal Opportunity for Welfare,' *Philosophical Studies*, 56: 77-93.
- Beitz, C. (1989). *Political Equality, An Essay in Democratic Theory*. Princeton University Press, New Jersey.
- Copp, D. (1992). 'The Right to An Adequate Standard of Living : Justice, Autonomy , and the Basic Needs', *Social Philosophy and Policy*, 9/1 : 231-261.
- Daniels, N. (1975). 'Equal Liberty and Unequal Worth of Liberty', in Norman Daniels (ed.), *Reading Rawls*. Basic Books, New York.
- Di Quattro, A. (1983). 'Rawls and Left Criticism', *Political Theory* 11/1: 53-78.
- Dutta Gupta, S. (1979). *Justice and the Political Order in India – An Inquiry into the Institutions and Ideologies – 1950-72*. K. P. Bagchi, Calcutta.
- Dworkin, R. (1977). *Taking Rights Seriously*. Duckworth, London.
- (1978). 'Liberalism' in S. Hampshire (ed.), *Public and Private Morality*. Cambridge University Press, Cambridge.
- (1981). 'What is Equality ? Part I: Equality of Welfare; Part II: Equality of Resources', *Philosophy and Public Affairs*, 10/3-4: 185-246, 283-345.
- Freeden, M. (1991). *Rights*. Open University Press, Buckingham.
- Galeotti, A. E. (1993). 'Citizenship and Equality', *Political Theory*, 21/4: 585-605.
- Gutmann, A. (1980). *Liberal Equality*. Cambridge University Press. NY.
- Haksar, V. (1998). 'Collective Rights and the Value of Groups', *Inquiry*, 41 : 1-23.

- Hampton, J. (1998). *Political Philosophy – An Introduction*. Oxford University Press, New Delhi.
- Ishay, M. R. (1997). *The Human Rights Reader*. Routledge, New York.
- Jha, S. (1997). *Secularism in the Constituent Assembly Debates -- 1946-50*.
- Jones, P. (1994). *Rights*. Macmillan. London.
- Kymlicka, W. (1989). *Liberalism, Community, and Culture*. Oxford University Press, Oxford.
- (1990). *Contemporary Political Philosophy, An Introduction*. Clarendon Press, Oxford.
- (1995). *Multicultural Citizenship: A Liberal Theory of Minority Rights*. Oxford University Press, Oxford.
- Paper entitled "Three Forms of Group Differentiated Citizenship In Canada."
- Levin, M. (1981). 'Equality of Opportunity', *Philosophical Quarterly*, 31: 110-125.
- Lukes, S. (1991). 'Equality and Liberty : Must they Conflict ?', in D. Held (ed.), *Political Theory Today*. Polity Press, Cambridge.
- Michelman, Frank I. (1975). 'Constitutional Welfare Rights and A Theory of Justice' in N. Daniels (ed.) *Reading Rawls*. Basic Books, New York.
- Mill, J. S. (1986). *On Liberty*. Penguin, Suffolk.
- Nagel, T. (1986). 'Equality', in R. M. Stewart (ed.), *Readings in Social and Political Philosophy*. Oxford University Press, New York.
- (1991) *Equality and Partiality*. Oxford University Press, New York.
- Nozick, R. (1974). *Anarchy, State and Utopia*. Basic Books, New York.
- Pannikar, K. M. (1962). *In Defence of Liberalism*. Asia Publishing House, Bombay.
- Paul, E. F.; Miller, F. D.; Paul, J. and Ahrens, J., ed., (1987). *Equal Opportunity*. Basil Blackwell, Oxford.
- Paul, E. F.; Paul, J., and Miller, F. D. (ed.). (1984). *Human Rights*. Basil Blackwell, Oxford.

- Peffer, R. (1978). 'A Defense of Rights to Well-Being', *Philosophy and Public Affairs*, 8/1: 65-87.
- Phillips, A. (1995). *The Politics of Presence*. Clarendon Press, Oxford.
- Plant, R. (1991). *Modern Political Thought*. Basil Blackwell, Oxford.
- Rawls, J. (1971). *A Theory of Justice*. Oxford University Press, London.
- (1985). 'Justice as Fairness: Political not Metaphysical', *Philosophy and Public Affairs*, 14/3: 223-51.
- Rao, B. S. (1968) *The Framing of India's Constitution; Select Documents I, II, III, IV*. (SD). Government of India Press, Nasik.
- Raz, J. (1986). *The Morality of Freedom*. Oxford University Press, Oxford.
- (1994) 'Multiculturalism: A Liberal Perspective', *Dissent* (Winter)
- Sandel, M. (1982). *Liberalism and the Limits of Justice*. Cambridge University Press, Cambridge.
- Sen, A. (1980). 'Equality of What', in S. McMurrin (ed.), *The Tanner Lectures on Human Values, Vol. I*. Cambridge University Press, Cambridge.
- Shapiro, I. (1986). *The Evolution of Rights in Liberal Theory*. Cambridge University Press, New York.
- Taylor, C. (1982). 'The Politics of Recognition', in A. Gutmann (ed.), *Multiculturalism and the 'Politics of Recognition'*. Princeton University Press, Princeton.
- Waldron, J. ed. (1990). *Theories of Rights*. Oxford University Press, New York.
- (1986). 'Welfare and the Images of Charity', *Philosophical Quarterly*, 36/145: 463-82.
- (1987). *Nonsense upon Stilts. Bentham, Burke and Marx on the Rights of Man*. Methuen and Co. Ltd. Suffolk.
- (1993). 'Rights', in R. E. Goodin and Philip Petit (ed.), *A Companion to Contemporary Political Philosophy*. Blackwell, Oxford.
- Williams, B. (1971). 'The Idea of Equality', in H. Nedau (ed.), *Justice and Equality*. Prentice-Hall, Englewood Cliffs, NJ.

Young, I. M., (1990). *Justice and the Politics of Difference*. Princeton University Press, Princeton.