
FROM FORMAL TO SUBSTANTIVE: AN ANALYSIS OF EQUALITY IN THE INDIAN TRANSFORMATIVE CONSTITUTIONALISM THROUGH EQUITY

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ABSTRACT

This paper examines the two different dimensions of 'equality' namely, formal equality and substantive equality. In the era of constitutional transformation, equality has passed through various stages to meet equity. It crosses various ideas such as, classification test, arbitrariness, the fairness rule given under natural justice and finally, the anti-discrimination policy. It also adds a reference regarding equality as an identical treatment under Article 14. Different types of inequalities prevailing in the Indian society are also discussed with reference to constitutional transformation. These inequalities are related to caste, gender and sexual orientation and give an idea that the traditional equality code, which is based on sameness (also known as formal equality), is insufficient in the current scenario of Indian society. Thus, the entire paper mainly focuses on three major aspects of equality in transformative constitutionalism. First, the judiciary is playing an important role in unequal society as a protector of the Indian constitutional guarantees. Because it has delivered various influential decisions, that have shifted the nature of equality from formal to substantive. Second, the concept of transformative constitutionalism has made the Indian Constitution a living document. As it is gradually becoming an evolutionary instrument by eliminating different types of inequalities. Third, the concept of constitutional morality has completely shifted the path of formal equality towards equity-oriented substantive equality. To eradicate different types of these inequalities present in the Indian society, it added the ways such as, reservations, affirmative actions, participation and inclusivity. In the end, this paper focus on various challenges and future directions for attaining substantive equality based on equity.

Keywords: Transformative Constitutionalism, Equality, Equity, Constitutional Morality, Indian Constitutional Law.

1. Introduction

A constitution is considered transformative when it helps to bring a change in society and reshape its structure.¹ In the same way, the Indian Constitution is also considered as a tool of transformation of society. Under this transformation, the Indian judicial system has also applied its interpretative vision for defining equality, from a narrow concept of formal equality (which is based on identical treatment) towards a more matured, equity-based substantive equality. It has acknowledged various inequalities and social realities in Indian society with the help of its judicial pronouncements.²

This shift of equality shows evolutionary process of the concept of equality in the Indian transformative constitutionalism. The reason behind this evolution is that the Indian Constitution is a dynamic instrument of social change. The idea of constitutional morality also plays central role in this evolution by enabling courts to prioritise values of dignity, autonomy and inclusion over prevailing social norms and majoritarian practices. Through this approach, the judiciary has helped to reconceptualised equality, as a tool to address inequality and foster a more just and inclusive constitutional order.³

Due to several drawbacks of formal equality, the Indian constitutional jurisprudence with the help of judiciary has undergone a shift from formal equality to substantive equality which is based on equity.⁴ In India, Judicial interpretation has progressively applied these ideas to promote a more integrated, equity-based framework of equality. While interpreting right of equality, the courts have recognised various types of needs of society including their vulnerabilities and lived realities. These judicial efforts are generally grounded in ideals of social justice, inclusion, fairness, reasonableness and non-arbitrariness.⁵ The Indian judiciary has expanded the scope of equality by linking it with dignity, livelihood and social justice.⁶ More recent judgments have firmly established that equality must be understood in relation to privacy and autonomy and must reinforce a substantive, rights-oriented constitutional

¹Gunisha Saluja, “Transformative Constitutionalism in Contemporary Indian Society” 7 *IJLSI* 166 (2025).

² *Maneka Gandhi v. Union of India* (1978) 1 SCC 248.

³ Karl E. Klare, “Legal Culture and Transformative Constitutionalism” 14 *SAJHR* 150–56 (1998).

⁴ *Navtej Singh Johar v. Union of India*, AIR 2018 SC 4321; *Maneka Gandhi*, *supra* note 2.

⁵ *Maneka Gandhi*, *supra* note 2; *R.C. Cooper v. Union of India*, AIR 1970 SC 564.

⁶ *Francis Coralie Mullin v. Administrator, Union Territory of Delhi* (1981) 1 SCC. 608; *Olga Tellis v. Bombay Municipal Corp.* (1985) 3 SCC 545.

framework for it, grounded in equity.⁷

This paper adopts a doctrinal and analytical approach to analyse the concept of equality. It has examined various constitutional provisions and landmark judicial decisions given by the Indian Judiciary. It has further incorporated some important perspectives effecting feminine rights, caste hierarchy and sexual-orientation, to critically examine the evolution of equality. It has introduced the concept of equality under a structural theme. From starting to ending it has traced the transition of equality, from formal to substantive. It has highlighted the need of equity-oriented substantive equality in the Indian societal structure.

2. Concept of Formal Equality and Substantive Equality

Early jurisprudence on equality under Article 14 of the Indian Constitution⁸ has emphasized on the concept of equality with the idea that no person is above the law. Previously, it had mainly focused on the doctrine of reasonable classification, as developed in case of *Budhan Choudhry v. State of Bihar*.⁹ In *Ram Krishna Dalmia v. Justice Tendolkar*,¹⁰ the principle of equality has been defined with the help of reasonable classification. In it, it had focused on the idea that a law can differentiate between groups if the basis of such differentiation is clear, logical and linked to the aim of the law. If these conditions would not be satisfied, the classification will become arbitrary and unconstitutional. So, in the starting phase of Indian Judiciary the Courts just applied the procedural fairness, reasonable classification and non-arbitrariness rather than addressing on substantive inequalities. This type ideology is basically present in decisions like *A.K. Gopalan v. State of Madras*.¹¹

In this way, it is clear that the starting history of Indian judiciary applied the formal equality model. But now there is a question why it has shifted its interest towards substantive equality. The reason is that the formal equality model had treated the inequality primarily under the domain of 'sameness' while applying it in the law. Due to this drawback, the focus of judiciary has completely shifted toward equity-oriented substantive equality, having ideals of fairness and natural justice, as reflected in decision *Joseph Shine v. Union of India*.¹²

⁷Justice K.S. Puttaswamy v. Union of India (2017) 10 SCC 1; Navtej Singh Johar, supra note 4.

⁸ Constitution of India, art. 14.

⁹ AIR 1955 SC 191.

¹⁰ AIR. 1958 SC 538.

¹¹ AIR 1950 SC 27.

¹² AIR 2018 SC 4898

2.1 Meaning of Formal Equality

Formal equality is based on the idea that justice requires identical treatment of all individuals, irrespective of their social or historical context. It adopts a “sameness” test, assuming that all individuals have same position in law and in fact. It requires that all individuals be treated equally before the law without any discrimination (but not hidden discriminations). It is a general principle of equality that emphasises ‘uniformity’ and the ‘equal’ application of legal rules to all persons.¹³ This approach prioritizes neutrality over differential needs or disadvantages of the person. So, in a legal system which is based on justice, formal equality cannot survive alone without the incorporation of equity because real justice often requires a shift from formal equality to equity-based substantive equality.¹⁴ The major differences between formal equality and equity are mentioned below:

- i. Formal equality involves treating individuals alike in terms of rights on the assumption that they are similarly situated. In contrast, equity recognises existing inequalities and adjusts access to opportunities according to the circumstances.¹⁵
- ii. Formal equality provides all individuals with the same resources or opportunities, whereas equity adjusts support based on individual needs to achieve fair outcomes.¹⁶
- iii. Formal equality concerns equal behaviour, whereas equity seeks to achieve just and fair results.¹⁷
- iv. Equality focuses on uniform treatment, while equity aims to achieve fairness by addressing different needs and circumstances.¹⁸

The difference between formal equality and equity in the above points draws an idea that formal

¹³ Sukhmanpreet Kaur & Ravnoor Kaur, “The Illusion of Sameness—Concept of Equality” 13 *IJCRT* a228 (2025).

¹⁴ Sian Mantovani, “Equality vs Equity: Is There a Difference?”, *available at*: <https://www.aoc.co.uk/news-campaigns-parliament/news-views/aoc-blogs/equality-vs-equity-is-there-a-difference-sian-mantovani> (last visited on may 5,2026).

¹⁵ OECD, “Equality and Equity” at 1 (2021), *available at*: <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/future-of-education-and-skills/learning-compass-constructs/Equality-Equity.pdf> (last visited May 7, 2026).

¹⁶ Marin Health and Human Services., “Equality vs. Equity” 1, *available at*: https://www.marinhhs.org/sites/default/files/boards/general/equality_v._equity_04_05_2021.pdf (last visited May 7, 2026).

¹⁷ Mantovani, *supra* note 14.

¹⁸ OECD, *supra* note 15.

equality cannot match its stand with equity while delivering justice. It has several limitations of its own, which are given below:

- i. It ignores structural inequalities.
- ii. It overlooks deep-rooted hierarchies, which are prevalent in society in the form of caste, gender and class by creating unequal starting positions.
- iii. By treating unequal groups as equal, it creates systemic patterns of exclusion and marginalization.
- iv. It fails to recognize inequality as structural rather than incidental.
- v. It continues existing systemic social inequalities.
- vi. It provides uniform treatment that can reinforce existing disadvantages by failing to provide compensatory or redistributive measures.

The limitations of formal equality which are discussed above have shown it lacks fairness perspective. It just focused on the application of sameness of law and ignores the question that how laws operate differently across different social scenarios. The gap between formal equality and natural justice model based on fairness and equity has shifted the course of Indian judicial history towards substantive equality. Now, in India, the substantive equality grounded in equity is trying to change the route of equality towards justice.

2.2 Substantive Equality and the Equity Paradigm

Substantive equality is the revolutionised version of the concept of formal equality. Formal equality is usually criticized on the idea that treating unequals equally would create injustice rather than eliminate it.¹⁹ On the other side, substantive equality shifts attention from identical treatment to the actual impact of laws and policies on different groups. The idea of substantive equality is based on the equity paradigm, as it focuses on the outcome rather than mere treatment.²⁰ In it, measures such as affirmative action and the enforcement of socio-

¹⁹ *Marin Health and Human Services*, *supra* note 16, at 2.

²⁰ Ayushi Tyagi and Arryan Mohanty, "Transformative Constitutionalism in India: An Overview" 3 *White Black Legal Law Journal* (2024), available at: <https://www.whiteblacklegal.co.in/transformational-constitutionalism-in-india-an-overview> (last visited May 10, 2026).

economic rights, especially those protecting marginalized groups, play an important role.²¹

The concept of equity operates as a mechanism to achieve justice where existing legal rules are inadequate to provide appropriate remedies. The term “equity” is derived from the Latin term ‘*aequitas*’, which means fairness or levelling. It developed as a supplementary system to common law and applied in situations where strict legal rules would lead to unjust outcomes, thereby promote fairness and principles related to natural justice.²² Regarding it, Paula Dressel observes that, “*the route to achieving equity will not be accomplished through treating everyone equally, but by treating everyone justly according to their circumstances.*”²³ That is why; equity is better suited to addressing the disadvantages faced by marginalised groups.²⁴

The Indian Constitution has also the similar aim that is to achieve substantive equality by addressing disadvantages and correcting systemic imbalances through equity. This aim is visible in basic structure theory of the constitution in the form of justice. The core components of substantive equality, which is part and parcel of equity, are:

- i. Redistribution,
- ii. Recognition,
- iii. Inclusion.

These core components of substantive equality including its dimensions, core focus, key features, objectives and its connection to basic equality are given in the chart below:

²¹ *Id.*

²² Rajesh Kumar, “Equity Principles under Indian Legal System and Its Relevance in Contemporary Era: A Critical Study” 7 *IJNRD* c555 (2022).

²³ *Marin Health and Human Services.*, *supra* note 16, at 2.

²⁴ *Id.* at 1.

Dimension	Core Focus	Key Features	Objectives	Connection to Equality
<i>Redistribution</i>	Socio-Economic Justice	<ul style="list-style-type: none"> • Allocation of resources and opportunities • Structural reforms • Affirmative action • Welfare measures 	<ul style="list-style-type: none"> • To reduce material inequalities arising from caste, class and gender hierarchies. 	<ul style="list-style-type: none"> • It ensures that equality must address economic deprivation and structural disadvantages.
<i>Recognition</i>	Identity and Dignity	<ul style="list-style-type: none"> • Respect for diverse identities • Elimination of stigma and stereotypes • Transformation of discriminatory social norms 	<ul style="list-style-type: none"> • To affirm the equal moral worth of all individuals and groups. 	<ul style="list-style-type: none"> • It complements redistribution by addressing symbolic and cultural injustice.
<i>Inclusion</i>	Participation and Representation	<ul style="list-style-type: none"> • Active involvement in decision-making • Meaningful representation • Access to institutional processes 	<ul style="list-style-type: none"> • To ensure marginalized groups have a voice and agency in society. 	<ul style="list-style-type: none"> • It strengthens democracy. • It ensures equality as participatory, not merely formal.

The above given chart highlights the interrelated dimensions of substantive equality by emphasising on redistribution, recognition and inclusion as essential components for achieving justice. The ‘redistribution’ focuses on elimination of socio-economic inequalities through the just allocation of resources and opportunities. This dimension ensures that equality must address material deprivation rooted in caste, class and gender hierarchies. The ‘Recognition’ emphasizes on respect for identity and dignity as well as the elimination of stigma. It seeks to transform social norms based on caste, gender, sexuality or disability. By affirming equal moral standards, the recognition complements redistribution in the advancement of equality.

The 'Inclusion' integrates equity with equality by promoting fairness, equal value for all individuals and active participation of all in shaping social systems and institutions.²⁵ It requires the active participation of disadvantaged groups in social, political and institutional processes. This dimension highlights that democracy and participation are essential parts of equality. Redistribution, recognition and inclusion as the core components of substantive equality have collectively generate the idea that it is closely related to the constitutional value of dignity and ensure that individuals should be treated with equal respect and worth.

2.3 Equality in the Indian Constitutional Scheme

The Indian Constitution treats Articles 14, 15, 16 and 21 as an integrated equality code rather than isolated provisions.²⁶ A harmonious construction of these provisions demonstrates the doctrinal shift in Indian constitutional law from the classification test to arbitrariness and ultimately toward substantive fairness having impact of natural justice which is now evolved into anti-discrimination framework. This ideological historical evolution of equality has helped to generate more clear meaning of equality. It is now established as the backbone of modern Indian constitutional jurisprudence.

According to the reasonable classification test, a law is valid under Article 14 of the Indian Constitution,²⁷ if it satisfies two conditions. Those are given as below.

- i. *Intelligible Differentia*: The doctrine of intelligible differentia states that every classification rest on a clear and intelligible criterion that differentiate between persons included in the group from those the persons who are excluded. For example-income-based classifications for taxation.²⁸
- ii. *Rational Nexus*: The doctrine of rational nexus defines that the basis of classification must create a clear connection to the main purpose of the law. For example- A progressive taxation on higher-income groups for revenue generation.²⁹

²⁵Jinghe Han and Bojing Li, "Inclusion, Equity and Intellectual Equality: A Case of Overseas Educated Multilingual Students in an Australian Teacher Education Programme" 37 *Int. J. Biling. Educ. Biling.* (2024), <https://doi.org/10.1080/07908318.2024.2361375>.

²⁶ Constitution of India, arts. 14, 15, 16, 21.

²⁷ Constitution of India, art. 14.

²⁸ *Budhan Choudhry*, *supra* note 9.

²⁹ *Ram Krishna Dalmia*, *supra* note 10.

Early Article 14 jurisprudence majorly emphasized on the doctrine of reasonable classification,³⁰ as illustrated in *Kathi Raning Rawat v. State of Saurashtra*,³¹ where rational nexus was considered for the differential treatment for understanding the objective of a speedy trial. Same as, in *Ram Krishna Dalmia v. Justice Tendolkar*,³² the authoritative formulation of this test has been laid down, by holding that classification is valid if it is not arbitrary and it fulfils the requirements of above given two principles. An analysis of these cases suggests that in the initial history of concept of equality, the complete focus was on procedural fairness rather than deeper social structure disparities.

Later on, Article 14 was evolved to prohibit arbitrariness,³³ by recognizing that unequal or irrational state action violates equality. The cases such as, *E.P. Royappa v. State of Tamil Nadu*³⁴ and *Maneka Gandhi v. Union of India*,³⁵ are the examples of that period. That phase marked the beginning of a more integrated and rights-oriented interpretation of equality. After that, the emergence of 'fairness' as a constitutional norm had represented a major shift in the Indian constitutional history. It was evolved from natural justice (based on common law rules) to procedural fairness (a flexible doctrine); and ultimately to constitutional fairness (a fundamental right and governing principle). Today, the concept of fairness is not just about how decisions are made, but also about whether those decisions are just, reasonable and consistent with constitutional values.

The shift in Indian constitutional law from the above-mentioned doctrines to substantive fairness ultimately creates a deep reliance on the principle of natural justice. With the growth of a more meaningful idea of equality and fair legal procedures under Articles 14 and 21, the principle of natural justice is became part of their scope.³⁶ As, the principle of natural justice emerged from common law, this is often seen as the counterpart of the American concept of fair process. This principle requires all administrative authorities to act fairly and follow due process while making decisions affecting the individual rights.³⁷ At its core, natural justice

³⁰ Constitution of India, art. 14.

³¹ AIR 1952 SC 123.

³² *Ram Krishna Dalmia*, *supra* note 10.

³³ Constitution of India, art. 14.

³⁴ (1974) 4 SCC 3.

³⁵ *Maneka Gandhi*, *supra* note 2.

³⁶ Ashish Makhija, "Principles of Natural Justice", *available at*:

<https://www.tnkpssc.com/Image/PRINCIPLESOFNATURALJUSTICE.pdf> (last visited May 10, 2026).

³⁷ Nat'l Inst. of Open Sch., "Principles of Natural Justice, in Introduction to Law" 78 (Module 6: Functions and Techniques of Law), *available at*:

https://digital.nios.ac.in/content/338hi/338_Introduction_To_Law_Eng_L6.pdf (last visited May 11, 2026).

principle is built upon two essential rules, which are given below:

- i. *Nemo Judex in Causa Sua*: It ensures fairness by preventing individuals from making decisions in cases where they are personally involved.³⁸
- ii. *Audi Alteram Partem*: It guarantees a fair hearing by allowing all parties to express their side. It presents relevant material before a conclusion is reached.³⁹

The doctrine of natural justice ensures fairness by requiring that decisions are made transparently, impartially and with due process. Despite modern challenges like digital governance, these are remains essential in preventing arbitrariness and upholding justice.⁴⁰ Indian courts have integrated these principles to ensure complete justice by emphasizing that laws should operate in a fair, balanced and rational manner.

Now, the concept of equality has taken turn toward anti-discrimination dimension. That is further divided into two types, direct and indirect discrimination. The former arises when a person receives disadvantageous treatment specifically due to characteristics like caste, gender, religion or disability and reflects an intentional distinction indirect discrimination refers to situations where a rule or practice appears neutral on its face but, upon closer examination, produces discriminatory effects. While this concept is well-established in several jurisdictions, it remains at an early stage of development in India.⁴¹

2.4 Equality through Differential Treatment and Constitutional Morality

Equality through differential treatment recognizes that treating everyone identically may perpetuate existing inequalities. Therefore, it justifies reservations, affirmative action and protective discrimination as necessary tools for achieving real equality. The Constitution of India permits such type of differential treatment under various Articles. The judiciary has also played a very pivotal role in the legitimization of affirmative action by upholding reservations and protective discrimination as essential steps to achieve substantive equality. In cases like

³⁸ *Id.* at 79.

³⁹ *Id.* at 78.

⁴⁰ Sudhir Kumar Dubey and Rang Nath Singh, "Doctrine of Natural Justice: Evolution, Principles, and Application in Indian Legal System" 4(6) *IJLL* 27 (2025).

⁴¹ Suryansh Verma & Axita Shrivastava, "Right to Equality as Part of Transformative Constitutionalism" 6 *IJLMH* 2366 (2023). <https://doi.org/10.1000/IJLMH.114675>.

*State of Kerala v. N.M. Thomas*⁴² and *Indra Sawhney v. Union of India*,⁴³ it recognized that such measures are not exception to substantive equality but are integral to it. Reservations for backward classes were upheld as an affirmative action and considered as constitutionally valid under Article 16(4) of the Constitution in decision given under *Indra Sawhney v. Union of India*.⁴⁴

Along with above discussed concept of differential treatment, recent judicial trends also indicate a shift toward constitutional morality over prevailing social morality, which has sparked a debate and controversy within the country.⁴⁵ The different aspects of constitutional morality are highlighted in the chart given below:

Aspect	Explanation	Objective	Connection to Equality
<i>Core Meaning</i>	<ul style="list-style-type: none"> It requires that laws, policies and practices align with the fundamental values of the Constitution, such as justice, liberty and equality. 	<ul style="list-style-type: none"> To ensure that governance is rooted in the constitutional principles rather than the social biases. 	<ul style="list-style-type: none"> It promotes the substantive equality over the formal equality.
<i>Normative Standard</i>	<ul style="list-style-type: none"> It acts as a guiding framework by ensuring that state actions must conform to the principles of dignity, justice and equality. 	<ul style="list-style-type: none"> To maintain the constitutional supremacy in the process of the governance. 	<ul style="list-style-type: none"> It ensures equitable treatment of all individuals.
<i>Judicial Role</i>	<ul style="list-style-type: none"> It Functions as a normative compass for the judicial interpretation. 	<ul style="list-style-type: none"> To guide courts in interpretation of laws, in accordance with constitutional Ideals. 	<ul style="list-style-type: none"> It enables courts to uphold equity and protect rights of individuals.
<i>Conflict with Social Morality</i>	<ul style="list-style-type: none"> Requires adherence to constitutional principles, even when they conflict with prevailing social 	<ul style="list-style-type: none"> To prevent majoritarian dominance and the perpetuation 	<ul style="list-style-type: none"> It protects marginalized groups and the minority communities.

⁴² (1976) 2 SCC 310.

⁴³ (1992) Supp. (3) SCC 217.

⁴⁴ *Id.*; Constitution of India, art. 16(4).

⁴⁵ Ayushi Tyagi and Arryan Mohanty, *supra* note 20.

	norms or popular morality.	of social injustice.	
<i>Equity-Oriented Approach</i>	<ul style="list-style-type: none"> • Supports corrective measures and affirmative actions to address existing inequalities. 	<ul style="list-style-type: none"> • To achieve substantive fairness and justice. 	<ul style="list-style-type: none"> • Strengthens the conception of equality as equity rather than mere uniform treatment.
<i>Protection of Rights</i>	<ul style="list-style-type: none"> • Ensures the safeguarding of the dignity and rights of vulnerable and marginalized groups. 	<ul style="list-style-type: none"> • To uphold constitutional justice in practical application. 	<ul style="list-style-type: none"> • Reinforces an inclusive and participatory conception of equality.

The above given chart shows that constitutional morality prioritizes constitutional values over societal inequalities and social norms and also shows that equality can be achieved through equity by enabling corrective measures to focus on deep-rooted unequal structures of the society.

3. Transformative Constitutionalism and Equality Paradigm

It is necessary to explore the term ‘constitutionalism’ before proceeding towards the idea of transformative constitutionalism. Thus, the concept of ‘constitutionalism’ embodies the idea that governmental power must be limited and its legitimacy depends on adherence to these constraints. At its core, it seeks to prevent arbitrary or authoritarian exercise of power.⁴⁶ The term ‘transformative constitutionalism’ combines the idea of ‘transformation’ with ‘constitutionalism,’ which signifies a dynamic and progressive interpretation of constitutional principles.

The concept of transformative constitutionalism originated in South Africa after the end of apartheid in the late 1990s.⁴⁷ Karl Klare discussed it in a human right’s based South African journal in 1998, in publication named, *Legal Culture and Transformative Constitutionalism*,⁴⁸ Klare defined it as a long-term process of interpreting and implementing a constitution having aim to reshape social, political and institutional structures, to promote

⁴⁶ *Id.*

⁴⁷ Prashant Sharma, “Transformative Constitutionalism: A Comparative Study of India, South Africa and USA” 2, 3 (Apr. 20, 2026), (Unpublished research paper, SSRN), *available at*: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6601158 (last visited May 10, 2026).

⁴⁸ *Id.*

democracy, equality and participatory governance.⁴⁹ The journey of transformative constitutionalism under Article 14 can be seen through the decision in *State of West Bengal v. Anwar Ali Sarkar*,⁵⁰ wherein the Court declared that an Act passed by the State Government as void. That Act had given arbitrary powers to the Government to classify offences according to its discretion. This case marked the beginning of an expanded interpretation of the right to equality.⁵¹ The core features of transformative constitutionalism reflecting the impact of equity in form of substantive justice are as follows:

- i. Transformative constitutionalism seeks to dismantle prevailing hierarchies of society such as caste, patriarchy and class privilege.
- ii. It promotes an egalitarian social order grounded in dignity, equality and fraternity, aligning with the Constitution's broader goal of restructuring unequal social relations.
- iii. It protects rights and includes persons (having disadvantageous position) in mainstream of the society.
- iv. Under its domain, Courts have adopted an approach based on objectives of law.
- v. It focuses on protecting and expanding fundamental human rights, especially those based on the basic structure of the Constitution like equality and justice.⁵²
- vi. It has constructed Constitution as a living and flexible document that change with society.
- vii. It adapts to new social conditions and evolving ideas of right and wrong, so that laws remain fair and relevant in the prevalent social structure.

In India, judiciary has played an important role in protecting people's rights through transformative constitutionalism. It is trying to remove discrimination, promote equality and make sure that the law is applied fairly to everyone.⁵³ There are several judicial

⁴⁹ *Id.*

⁵⁰ AIR 1952 SC 75.

⁵¹ Suryansh Verma and Axita Shrivastava, "Right to Equality as Part of Transformative Constitutionalism" 6 *IJLMH* 2361 (2023), <https://doij.org/10.1000/IJLMH.114675>; Constitution of India, art. 14.

⁵² Aradhya Gupta, "Transformative Constitutionalism in India: A Path Towards a Just Society" 4 *IJCLLR* 157 (2024).

⁵³ Ayushi Tyagi and Arryan Mohanty, *supra* note 20.

pronouncements which have helped to bring constitutional transformation. Some of them are given below:

- i. *Shafin Jahan v. Asokan K. M.*⁵⁴ is the case where the Court said that a person has the right to choose whom to marry and make their own decisions about marriage.
- ii. *Independent Thought v. Union of India*,⁵⁵ in which court has expanded child protection laws in the light of right to dignity.
- iii. *In Supriyo @ Supriya Chakraborty v. Union of India*,⁵⁶ the questions of equality and social change are stressed upon which have reflected ongoing constitutional engagement with transformation.

These decisions have demonstrated that constitutional guarantees are continually reinterpreted by the judiciary to remain relevant and effective in addressing new challenges of inequality in the era of transformative constitutionalism.

4. Dismantling Structural Inequalities

The main goal of Constitution is to dismantle structural inequalities within the Indian society. Under it judiciary is also playing its part by applying the principle of equity. By removing inequalities it seeks to address deep-rooted social disadvantages. The major forms of inequalities are related to caste, gender and sexual-orientation. An elaborative meaning with other perspectives of these inequalities is given in the below paragraphs:

4.1 Caste-Based Inequality

Caste system has created an imbalance in Indian society because it is very deeply rooted in Indian social structure from the ages. It has divided society into rigid hierarchies based on birth. It affects people by restricting their access to resources, opportunities and social transformation across generations. The constitution has addressed this inequality through various safeguards including reservations. Articles 14 to 18 of Indian Constitution prevent any form of

⁵⁴(2018) 16 SCC 368.

⁵⁵ (2017) 10 SCC 800.

⁵⁶ (2023) SCC Online SC 1348.

discrimination including caste.⁵⁷

There Article 15(1) expressly banned such discrimination while Article 15(4) permits the State to adopt initiatives for the upliftment of socially and educationally weaker classes.⁵⁸ Similarly, Article 16(4) ensures adequate representation of these groups by enabling reservation in public jobs.⁵⁹ Even a direct attack on caste-based exclusion is also prohibited under Article 17.⁶⁰ Under Article 46, the State has been directed to promote the educational and economic interests of these people under the title weaker sections.⁶¹ So, it covers interests of SCs and STs by protecting them from social exclusion and mistreatment. Articles 330 to 342 provide for political representation and the formal identification of these people under the identity of Scheduled Castes and Scheduled Tribes by ensuring their participation under Indian governance system.⁶²

The Supreme Court has also upheld measures against caste-based inequality in *Indra Sawhney v. Union of India*,⁶³ there; it validated reservations for classes of persons who are socially deprived. The judiciary, in the case named as, *State of Kerala v. N.M. Thomas*,⁶⁴ has affirmed that equality permits differential treatment to address historical disadvantages. Together, these judicial pronouncements demonstrate that the Constitution has a aim not only to eliminate caste-based discrimination but also to provide social justice and inclusion of deprived ones in the society.

4.2 Gender Inequality

In India, gender inequality is largely rooted in patriarchal patterns of society. It causes reversal effect on women identity. Constitution of India has greatly helped in protection of gender inequality, under the concept of dignity and personal autonomy. Judiciary in India has also criticized gender inequality by giving them; rights over their bodies, choices and identities. There is a case known as, *Suchita Srivastava v. Chandigarh Administration*,⁶⁵ in which the

⁵⁷ Constitution of India, arts. 14–18.

⁵⁸ Constitution of India, art. 15(1), (4).

⁵⁹ Constitution of India, 16(4).

⁶⁰ Constitution of India, art. 17.

⁶¹ Constitution of India, art. 46.

⁶² Constitution of India, arts. 330–342.

⁶³ *Indra Sawhney*, *supra* note 43.

⁶⁴ *State of Kerala*, *supra* note 42.

⁶⁵ (2009) 9 SCC 1.

Supreme Court recognized bodily autonomy of a woman and held that a woman's reproductive choices are a part of her personal liberty under Article 21 of Indian Constitution.⁶⁶

After this, an important judgment of the Supreme Court came, which significantly helped to strengthen the foundation of gender equality in India. The said case was, *Justice K.S. Puttaswamy v. Union of India*,⁶⁷ where the Supreme Court includes bodily integrity and decisional autonomy as a part of privacy. That case became a milestone for the judiciary. That was followed as an example by Supreme Court in several cases including, *Joseph Shine v. Union of India*,⁶⁸ where Supreme Court had struck down the adultery law for treating women as property. *X v. Principal Secretary, Health & Family Welfare*,⁶⁹ also became important case, where the Court had extended abortion rights to the unmarried women and declared that, denial of such access would violate the women's bodily autonomy and freedom to take decision. In this way, judicial pronouncements have certainly with great intellectual ability expanded the gender rights by eliminating inequality with the help of equity.

4.3 Sexual Orientation and Identity

Indian constitution has challenged different assumptions about sexuality, primarily through the combined application of Articles 14, 15, 16 and 21.⁷⁰ These Articles together form a constitutional framework that upholds the rights and identities of individuals beyond traditional heteronormative frameworks. The judiciary has also recognised these rights of sexual orientation and identity under the case known as, *Navtej Singh Johar v. Union of India*.⁷¹ This case marks a shift toward the constitutional recognition of diversity in sexual orientation by considering that no human beings as lesser than other human, solely because of their association with a particular group, as it violates the principle of equality.⁷² In *National Legal Services Authority v. Union of India*,⁷³ recognition was given to the right of self-identification of gender and the Court explained that the term "sex" in Articles 15 and 16 also covers gender

⁶⁶ Constitution of India, art. 21

⁶⁷ *Justice K.S. Puttaswamy*, *supra* note 7.

⁶⁸ (2019) 3 SCC 39.

⁶⁹ (2022) 10 SCC 1.

⁷⁰ Constitution of India, arts. 14, 15, 19, 21.

⁷¹ *Navtej Singh Johar*, *supra* note 4.

⁷² Nivedita Ghosh, "Transformative Constitutionalism and Rights of Homosexuals in India and South Africa: A Comparative Study" 3(2) *CMR U. J. Contemp. Legal Affs.* 172 (2021).

⁷³ (2014) 5 SCC 438.

identity.⁷⁴

In *Justice K.S. Puttaswamy v. Union of India*,⁷⁵ the concept of sexual orientation formed as an essential facet of privacy under Article 21.⁷⁶ In the above given judgment judiciary has finally recognised a person's identity, based on his or her sexual orientation. It marks a significant shift in Indian constitutional law towards transformative constitutionalism having character of inclusiveness, dignity and equity. The Constitution has supported all identities being human and shows that heterosexuality is not just the only 'normal' identity on this earth. It embraced and respected diversity and ensures equitable treatment of all individuals. This evolution in constitutional history helps in reshaping society on the basis of equity and constitutional values which are guaranteed under substantive equality.

5. Challenges

The concept of equality as substantive, in transformative constitutionalism is facing several challenges. The most important challenges are given below:

- i. The expanding role of the judiciary in enforcing substantive equality can raise concerns about its overreach and can give non-relevance to the legislative intent created under democratic pattern of the government.
- ii. The affirmative action policies often lack effective implementation because of various issues, such as inadequate targeting, bureaucratic inefficiencies etc. That is why the benefits of redistribution under various action policies do not always reach the most marginalized groups in Indian society.
- iii. The concept of equality has not fully transformed itself according to the social and economic transformational needs of Indian society. Deep-rooted structural inequalities are still prevailing under the phenomenon of caste, gender and class.
- iv. The concept of reservation often criticized for under covering the merit and efficiency in various spheres of Indian society. On the other side, merit hides the unequal social

⁷⁴ Constitution of India, arts. 15, 16.

⁷⁵ *Justice K.S. Puttaswamy, supra* note 7.

⁷⁶ Constitution of India, art. 21.

conditions and access to resources.

- v. There is always a doubt that the progressive judgments may remain symbolic and they may not have a real-world impact on the society.

6. Future Directions

The concept of formal equality alone has proved insufficient to address deep-rooted social and economic inequalities as there remains a gap between legal rights and their actual implementation. To fill that gap, evolution of substantive equality under equity and transformative constitutionalism is essential. There are some suggestions in the form of directions:

- i. Future constitutional development must continue to move beyond formal equality toward a fully equity-oriented equality.
- ii. While doing interpretation of statutes, the Indian judiciary should focus on what actually happens in real life of the disadvantaged people.
- iii. Judiciary should apply real and substantive equality, based on equity rather than treating everyone in the same manner by applying formal equality.
- iv. The law on equality in Indian Constitution should be based on an understanding that people can face multiple forms of discrimination at the same time, because of caste, gender, class and sexuality. To eradicate this problem, the courts must form an intersectional approach.
- v. In India, the enforceability of socio-economic rights such as the rights to education, health and livelihood must be strengthened to overcome inequality at root level. Courts and policymakers must treat these rights as integral part to one's dignity and equality.
- vi. The real change in society cannot happen through courts alone. The government must also take active steps towards it. Good policies, proper implementation and accountability are the basic steps which are needed to turn constitutional ideals into real equality in society.

7. Conclusion

The Indian Constitution is not just a legal document but it serves as a powerful tool for transforming society. It is constantly evolving to meet changing social needs and to promote justice, equality and human dignity and promote fairness, respect and inclusion. Today, the idea of equality as substantive equality has moved from treating everyone exactly the same to ensuring fair and just treatment for all on the basis of different needs and situations of people. This change shows that treating everyone the same cannot solve long-standing and deeply rooted inequalities in society. It has recognised various social differences and disadvantages with the help of equity.

Courts are also increasingly interpreting the Indian Constitution in a more progressive and meaningful way. These are going beyond neutrality to ensure fair outcomes, by making real equality as the basis of true justice. Judiciary in this evolutionary process of equality is recognising indirect discrimination and intersectionality, which proved an important step toward constitutional transformation. In spite of all efforts and involvement of judiciary, it is wrong to say that the total equality is prevailing in the society. The inequality still exists. It is prevailing in society because of gap between constitutional ideals and real-life conditions.

To overcome this gap, the substantive equality must take full dominance in the concept of equality. Therefore, only the involvement of equity can help to achieve this substantive equality. It can guide in policies, governance and social reforms. It can bring context-based solutions, affirmative measures and give proper attention to the voices of marginalized groups. In the end it can be concluded that the future of equality in India is depends on this continuing transformative approach, where Constitution works as an active force for change. By bringing this change, the Indian Constitution can help to promote equality based on dignity, inclusion and fair distribution of opportunities. But, it can happen only when Constitution is interpreted in line with real-life conditions based on equity.