7 CONCLUSIONS AND RECOMMENDATIONS

The 'Right to equality' was one of the goals of national movement which the Indians had carried on with exemplary zeal and determination. The foreign rulers cared little to this demand of countrymen. The main theme of the laws was to protect the economic interests of the white people. Actually in imperialist system relations between rulers and the ruled are not based on equal status. Imperialism is the very negation of human rights. Therefore, for Indians it was futile to think of the right to equality during the foreign rule. It was for the first time in 1950 when the Indians were guaranteed this right under Articles 14 to 18 of the Constitution of India.

Since 'Right to Equality' is one of the important rights in a democratic system, it is necessary to probe into the minds of the framers of the Constitution. It has to be seen as to what they thought of this right in general and how they desired the implementation of the constitutional provisions for socio-economic transformation of the society. In this reference the role of judiciary is no less important as the Constitution itself has vested it with wide powers to protect fundamental rights of the people. In this work it has been tried to evaluate as to what extent 'Right to Equality' has contributed towards the constitutional end of a Welfare State.

Equality, a fundamental premise of democracy, is a classic ingredient of our modern system of social values. Like liberty it is also one of the chief embodiments of democracy. Both are relative terms as without one the other is a total nullity. With the change of time and circumstances the concept of equality has got varied meanings. Even the dictionary meaning of equality reveals different aspects of the term as 'the condition of having equal dignity, rank or privilege with others, the condition of being equal in power, ability, achievement or excellence; or fairness; impartiality, equality, due proportion, proportionateness.' But in fact men are not equal in either of these respects. They are equal mainly by virtue of being men. Whether men are treated equally or unequally by others depends on particular circumstance in which benefits or burdens are allotted to them. And it is a matter of individual characteristic and
treatment—a treatment not only to one another but between State and individual and vice-versa. This raises a question that all persons having a certain characteristic should be allotted a certain benefit or burden.

To determine as to what kind of treatment is equalitarian, a number of factors have to be looked into. Impartiality is the basic factor to a person to have equal treatment. It means the impartial allocation of some sort of benefit or burden by one to another. The French revolutionaries thought Equal Shares to all as another requirement to egalitarianism. Besides, ever since Aristotle, unequal allotments have also been egalitarian provided they satisfy the requirement of Proportional Equality. Similarly Unequal Shares corresponding to Relevant Differences may also be egalitarian provided they are based on relevant differences in personal characteristics. Age and citizenship are relevant to voting rights but not so sex or race or wealth.

In the 19th century the advocacy of anarchists for equal treatment to all in every respect, gave birth to the idea of equality of opportunity. On the historical grounds egalitarians also argued for legal equality. Hence with the growth of democratic institutions and the enactments of new constitutions in the world, basic rights have been provided adequate legal sanctions. According to the egalitarians the equal satisfaction of basic needs of every person is a prime responsibility of the State. In modern times the demand for economic equality has gained enough momentum. It means a reduction of extreme inequalities in the distribution of commodities. To achieve this end of economic equality, Karl Marx has revolutionized the ideas of the workers in a new direction demanding the common ownership of the means of production. He interprets equality as the opportunity for each to occupy the position which corresponds to his ability. With the result the principles to each according to his merit and to each according to the need found the support of egalitarians. On the other hand, in the present century Political Equality has even bypassed the significance of equality in other respects. The direct democracy is a system of equalization of political power. Therefore, political equality means equality of opportunity to participate in the political process of the State.

Both in the Western and Indian political thought the concept of equality has changed with time and circumstances. This evolution in the thinking of equality in
the social, economic and political spheres gave birth to the idea of Welfare State. This ultimately resulted to demand equality as a right, besides the growth of social and democratic institutions also created an awakening and a sense in men not only to demand this right but also written guarantees for its safe conduct as the age old theory of natural rights could not convince men for long. With the result most of the constitutions of the modern world have declared basic rights to the citizens for it is only then that a democratic State can justify the very purpose of its existence.

Among all the guarantees, guarantee to equality came to be regarded as the pivot of all basic rights. It is so because of the development of Marxist and socialistic approach for the eradication of social inequalities from the masses. It is specially on this equality that whole of the mansion of basic rights is built. Due to the ever increasing demand for social uplift of the masses concept of equality has by now become a basis of Welfare State. The guarantees, pertaining to the 'Right to Equality' in the Indian Constitution, are the outcome of inequalities the Indians suffered during the foreign rule. The Foreigners had left no efforts in dividing them socially, mentally and financially. The framers of the Constitution were well aware of this and were rather worried for the eradication of several existing social evils. They thought it proper that it could never be possible unless all Indians were treated on equal footing not only by one another in mutual dealings but by law itself. It was in these circumstances that the 'Right to Equality' was given an important place amongst all other rights provided in the constitution of India.

In the series of the provisions of the Constitution which deal with the right to equality, Article 14 guarantees that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. Equality before the law is an essential principle of jurisprudence. A citizen is protected against any discriminatory action of executive, legislative or judicial authority. Any law which violates this principle is a negation of this basic right and comes within the purview of judicial review. Every person is subject to the same law of the land irrespective of his race, religion, wealth, social status or political influence. Besides, article 14 reveals two different expressions 'equality before the law' and 'equal protection of the laws'. While the former is a familiar feature of the 'Rule of Law' of England, the latter is the outcome of the 14th
amendment of the Constitution of U.S.A. Several judicial interpretations of article 14 have acknowledged the existence of these two expressions.

Equality before the Law means equal subjection of all persons to the laws. All are equally subject to the law though the law, to which some are subject, may be different from the law to which others are governed. Besides, from the administrative point of view, every State has to recognize some exceptions. These are essential though may be based on the comity of nations, political grounds or public interest. Article 361 provides certain exceptions in this respect. Foreign sovereigns, diplomats and the judges of Indian Courts have been guaranteed certain preferences. The legislators have also been enjoying certain privileges.

The Equal Protection of the Laws denotes subjection to equal laws applying alike to all in the same situation. It means the absence of any arbitrary discrimination by the laws themselves as well as in their administration. Undue favour and individual or class privilege on the one hand, and a hostile discrimination or the oppression of equality on the other, is the very denial of the concept of 'equal protection of the laws'. The law shall be enforced against all equally without any distinctions are made on any ground. Besides, equal protection of the laws does not mean that all laws must have universal application for all persons are not, by nature, in the same position. The varying needs of different classes of persons often require separate treatment. This is what Article 14 intends. It forbids class legislation and not reasonable classification for the purpose of legislation. This clause, however, does not take away from the State the power to classify persons for legislative purposes, though the classification may be on different basis. It may be geographical or according to objects or occupation or the like.

Practically the Indians have been enjoying this right to a great extent. It is evident from the fact that Ex. President V. V. Giri and Prime Minister Mrs. Indira Gandhi both appeared before the courts in Delhi and Allahabad respectively in their election petitions. It shows the highest respect to the rule of law. On the other hand this right to equality will lose its reality if all the countrymen do not enjoy equal facilities of access to the court for the protection of their rights. It would be possible only when legal assistance is available for all on reasonable
terms and poorer sections of the society have equal access to courts as the richer sections.

Article 15 relates to the specific application of the general right of equality and is limited to the citizens only. It aims at providing equality in all the spheres of life viz. political, social, economic and cultural and thus tries to remove the disparities in all these respects. Clause (1) of article 15 ensures safety and better conduct against State's discrimination on the grounds only of religion, race, caste, sex, place of birth or any of them. Therefore, any law discriminating on any one of more of these grounds would be void. Besides, the guarantee under the clause can be invoked only when discrimination has been made by the State and not otherwise. Thus the State on its part is absolutely barred to treat any person unfavourably merely on the ground that he belongs to a particular religion or caste though on any other ground or consideration differential treatment will not be unconstitutional. Such classification, on any other ground, may be based on physical or intellectual fitness for some work, on better provision for education of women and even on the ground of residence.

Similarly the State is specifically warned that religion cannot be the ground for any disqualification of discrimination in any public matter. Nor is the State to offer unequal treatment to any citizen because of his race. In the same way any legislation based on caste consideration would contravene article 15 (1). So far as consideration for 'sex'is concerned any special provision can be provided in a legislation for the betterment of women and it cannot be challenged on the ground that there is no reasonable basis for classification.

Clause (2) of article 15, on the other hand, relates to State as well as private actions. It prohibits class discrimination in public places, and guarantees to the citizen’s equal access to shops, restaurants, hotels and places of public entertainments owned by private persons. It also deals with places of public resort which are either maintained by State funds wholly or in part; or dedicated to the use of general public. But discrimination on grounds of morality, health etc, is not prohibited. Besides, on the ground of 'race' discrimination is completely prohibited at public place and the word 'caste' seeks to improve the Hindu social system by abolishing several social evils. The Untouchability (Offences) Act,
1955, is an attempt in this direction. Hmoe to impos; any religious or social
disability upon any person on the considerations of'high caste' or law caste, will
take a person to the court of law for prosecution.

Clause (3) guarantees that 'nothing in Article 15 shall prevent the state from
making special provisions for women and children. For the betterment of these
two sections of the society the State can make special provisions and special
institutions may be established for the exclusive use of women or children.
However, the general prohibition contained in article 14 will apply so that the
special provision which the State makes cannot be arbitrary or unreasonable.
Equality between the sexes is an essential condition of democracy. Whatever a
man has the right to do, a woman should also have an opportunity and right to do.
They must have the same status as man. Hence special provisions must be made
for freeing women from unnecessary burdens and disabilities they suffer from,
both legally and in practice. Similarly to improve the conditions and standard of
working children by preventing their exploitation certain safeguards were most
essential. After independence the Union as well as several State Governments has
made certain laws for the well being of women folk and children.

Clause (4) of article 15 makes special provision for the advancement of any
socially and educationally backward classes of citizens or for the scheduled Castes
or Scheduled Tribes and such a provision cannot be challenged on the ground of
its being discriminatory. This clause was inserted in the Constitution as a result of
the First Amendment of the Constitution in 1951. This amendment itself was the
result of certain decisions of courts which were sought to be negatived in their
effects. Therefore, it was keenly felt that unless the State holds some special
power to improve the lot of the down trodden masses of India, it cannot bear this
special responsibility efficiently. Clause (4), therefore, seeks to bring article 15
and 29 in line with articles 16 (4), 46 and 340 so as to make it constitutional for
the State to reserve seats in the educational institutions for the members of
backward classes, Scheduled Castes and Scheduled Tribes.

Though several provisions of the Constitution have provided protection as
well as reservation for the depressed classes in the legislatures and services, it has
been a difficult problem to lay down any particular criterion to determine the
socially and educationally backward classes.' It is because socially backward 
groups are found as much as in the upper castes as in the lower castes. However, 
every special provision must be within reasonable limits and not at the cost of the 
interests of the country as a whole. It is the duty of the State to promote the 
educational and economic interests of the weaker sections of people and protect 
them from social injustice and all forms of exploitation.

In the present day circumstances democracy can never succeed unless and 
until the democratic principle of economic equality is truly applied to the 
society. Really for the many sided development of human personality economic 
equality is a base upon which whole of the social structure is erected. Hence the 
main objective of democratic society is to reduce the gap and disparity between 
haves and 'have nots'. With this end in view clause (1) of article 16 has 
proclaimed equality of opportunity for all citizens in matters cf public employment. This equality of opportunity, however, means equality as between 
members of the same class of employees and not equality between members of 
separate, independent classes. Clause (2) of article 16 declares any discrimination 
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 as a 
violation of the fundamental right of a citizen. The words 'descent' and 'residence' 
have been used with particular intention of not only avoiding discrimination in 
'appointment' and employment to an office under the State, but also to keep an all 
India character in services, as far as possible.

Clause (3) of article 16 empowers the Parliament to make any law prescribing 
residence within the State as a condition for particular classes of employment or 
appointment under any State specified in I Schedule or any local or other 
authority. It, thus restricts the operation of clause (2) by making this exception in 
the matter of employment. A citizen cannot be denied employment in any State on 
the ground of his being a non-resident in that State. It should also be noted that the 
permissible requirement under this clause is 'residence' and not 'place of birth'. 
This restriction has been included for efficiency.

On the other hand, clause (4) of article 16 is an exception to the general rule 
provided in clause (1) and (2) of the same article. Clause (4) empowers the State
to make 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. Thus only the citizens of the backward classes can enjoy this privilege. To determine the backwardness and investigate its causes Article 340 has provided for the appointment of a Commission. Apart from clause (4) of article 16 several other provisions of the Constitution have guaranteed certain safeguards to the Scheduled Castes, Scheduled Tribes and backward classes.

However, reservation beyond the permissible and legitimate limits would be liable to be challenged as a fraud on the Constitution. The members of the backward classes may also compete against the unreserved posts with members of the non-backward classes in a general competition. To assess the general condition of employment of the backward classes and the reservation in State services, several reports of the Commissioner of Scheduled Castes and Scheduled Tribes as well as the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes, have brought to light the real state of affairs. Lastly, in accordance with clause (5) of article 16 the offices relating to religious institutions may be reserved for persons professing that particular religion only. The State is competent enough to make such reservation.

Article 17 is a landmark in the constitutional history of India—not because it has abolished 'untouchability' but because it has endeavoured to change an age-old social system. It is a beginning towards social revolution. No doubt the evil of untouchability has its origin in caste system but the 'caste' system in itself and 'casteism' has got two distinct meanings and has their deep roots in ancient Indian social systems. While caste (Varna Vyavastha) was based on 'Karma' and, therefore, was a pragmatic device for skill through specialization, the 'casteism' (Jativad) is only an unhealthy, social mentality which in the long run got its true colour, when the membership of a particular caste was restricted on the basis of birth alone. This created divisions in the social life and the idea of ceremonial purity and the superiority of caste based on birth led to certain classes being considered as Untouchables with the birth of untouchables a new history of
exploitation of the lower caste, social injustice, inequality in all walks of life, started.

The advent of Dr. Ambedkar on the Indian political scene proved a boon to the untouchables to start a movement for their uplift under his leadership. From time to time till his end the depressed classes made several efforts to undo this man made social evil and live like human beings in the society on equal status. They formed their own organization 'Scheduled Castes Federation' to fight for social justice. Gandhiji provided a new name 'Harijan' to these people and actually after 1932 till his martyrdom he fought a ceaseless struggle to abolish untouchability. In 1956 Dr. Ambedkar took another step of converting the 'untouchables' to Buddhism so that these people might be separated completely from 'high caste' Hindus. He also converted the Scheduled Caste Federation into a political party known as the Republican party of India. But his passing away left the untouchables in dolldrums. However, in independent India the upliftment of depressed classes has become a continuing process and from several other platforms a voice has been raised for providing these people equal social status.

Article 17 of the Constitution not only declares the abolition of untouchability but also that it shall be an offence punishable in accordance with law. However, it should also be noted that the word untouchability has nowhere been defined in the Constitution.

In the literal sense persons suffering from infectious diseases may be treated as untouchables on hygienic grounds. What article 17 intends is to face this problem as a social evil, hence efforts to abolish untouchability. Consequently, in order to implement article 17 and as empowered by article 35, Parliament enacted the Untouchability (Offences) Act XXII of 1955, which provides penalties for refusing to render services to a Harijan and makes provision for the use of public places by Harijans without any distinction of birth and caste. However, abolition of untouchability under article 17 does not mean that it also guarantees the right of access or to use private property. The basic purpose of this article is not only to eradicate the social evil but also to abolish all the factors which foster, 'Social inequality'. Since both the Constitution and the Untouchability (Offences) Act are silent in giving any specific definition of untouchability, the prosecution of
persons becomes difficult in view of legal complications. As a result in 1972 it was sought to make necessary modification in the Untouchability Act so as to make punishable even the pronouncement for promoting untouchability and provide stringent punishment in other castes. For this purpose a bill is pending in the Parliament.

After independence a vigorous campaign against untouchability has been launched in the development programmes of the Government as well as several other social and political organizations. The appointment of Commissioner for the Scheduled Castes and Scheduled Tribes, and also the Director General for the Welfare of Backward Classes, is mainly for this purpose. In the States separate Social Welfare Departments have been set up and at the district level social Welfare Officers have to look after the well being of untouchable. The appointment of Committee of Untouchability and the Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes were steps toward achieving the desired goal in this direction. Besides, several other voluntary bodies have also been doing useful social service in this direction.

Despite several general efforts on the parts of the Union and the State Governments as well as a number of voluntary bodies, the real state of affairs, speaks a different version. All over the country, hardly any day passes when the incidents of atrocities and maltreatments over Harijans by high caste Hindus are not reported in the press. Harijans have been facing monstrous atrocities and undergoing the worst kind of humiliation and torture possible. It is really a sorry and deplorable state. Therefore, in the existing circumstances it is an open challenge as well as a warning to all the people of depressed classes, that they rise to the occasion and fight for their survival. They have to face a crucial test fight or persishh. No amount of money can be fruitful unless the conscience of the masses is prepared to learn the writing on the wall. What is actually needed for eradicating this social evil is a genuine change of heart by all Indians, otherwise all the plans and efforts are useless as 'don't touchism' is a form of mental disease.

Article 18 is based on the ideal of democratic equality. It is indeed a beginning of the movement towards equality and social revolution. During the foreign rule mentality of creating differences among the people by conferring
titles, paid dividends to the British rulers. But with their departure from this land, this system has also been said good-bye. Now all the Indians have been guaranteed by the Constitution 'equality of status'. Article 18 aims at preventing the growth of any artificial inequality in the society. It seeks to prohibit the conferment of a 'title' a term that clings to one's name to honour the person concerned. However, it also provides certain exceptions in the award of military or academic distinctions which are conferred in recognition of one's academic pursuits or gallantry in the armed forces. The 'Param Vir Chakra', 'Mahabir Chakra', 'Vir Chakra' or 'Ashok Chakra' and 'Bharat Ratna', 'Padam Vibhushan', 'Padam Bhushan' and 'Padam Shri' are such decorations. The critics think it a clear case of violation of the constitutional provision particularly the Preamble which guarantees 'equality of status'. In the pretext of 'distinction' the party government can misuse the constitutional provision and if granted in abundance in future a new class of award winners might grow a class completely opposed to the principle of equality.

However, article 18 has nowhere made it an offence punishable by law to receive a title. The decorations may be invalid only in case they amount to title. Then will follow the legal consequences so that the court could be moved for issuing a writ. Therefore, such decorations can be considered unconstitutional provided the recipients have obtained some material advantages over the rest of the community and due to this a distinct privileged class or class of nobility has emerged in the society. In 1970 an attempt was made by Acharya J. B. Kriplani by moving a constitutional amendment bill to do away with the practice of conferring awards. He was of the view that the provisions of the Constitution had been circumvented by an executive order of the government which had instituted the custom by using the word 'Award' instead of 'Titles' as stipulated in the Constitution. The Government, on the other hand, maintained that the award of titles was incongruous with a socialist society. Really this system has now become institutionalised. These awards were done away with during the Janta regime but reintroduced when Congress (I) emerged Victorious in 1980 at the centre. Better a democracy does not create titles and titular glories. Let good works be its own award.
In a democratic Welfare State the phrase 'social revolution' implies varied meanings. To Indians it is relative to the various aspects of their lives such as social, economic, cultural and political. A rapid socio-economic transformation of society is another name of social revolution. Unless the common citizens of a country are fully enlightened and awakened to these problems of the society, a Welfare State can hardly be attainable. Therefore, a Welfare State cannot adopt an attitude of indifference to the challenge of social inequality and economic injustice. Without a social revolution it is not possible to achieve the goal of Welfare State. The feelings of equality envisage social justice which ultimately demands a social revolution. After independence despite failures and hinderances in practice, the process of social revolution has been a continuing phenomenon. Regarding the theoretical aspect of social revolution, the Preamble and the Directive Principles of State Policy of the Constitution, the Political parties and the five year plans, have promised socio-economic changes of the Society.

The Preamble itself is not only the spirit of the Constitution but also speaks the desires of the Indian people for 'social equality'. The words contained in the Preamble —'Justice-Social, economic and political,' 'equality of status' to all the citizens and 'fraternity' are nothing but harbingers of social revolution in India. It is, in fact the spirit of brotherhood that the Preamble intends to achieve. It can be achieved by abolishing all communal, sectional, local and caste ridden feelings which are the real obstacles in the way of equality as well as the unity of India. All these words of the Preamble are guide lines to the rulers for changing the very structure of society through socio-economic reforms.

The provisions concerning Directive Principles of State Policy have their own importance in directing the Central as well as the State Governments in formulating progressive policies which will deliver social and economic justice to common men These principles have affirmed that for realising these goals, the ownership and control of the material resources of the country should be so distributed as best to subserve the common good and that the operation of the

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1. The Swatantra Party, S. S. P. and B. K. D. along with some regional political parties had been merged into one known as BHARTIYA LOK DAL.
economic system should not result in the concentration of wealth and economic power in the hands of a few. No doubt these provisions are mandatory in character and, therefore, do not have judicial sanction like the fundamental rights, but in its historic judgment in Keshavanand Bharti vs. State of Kerala, the Supreme Court has provided these principles their due place in the Constitution. For the first time 'Right to Property' has been declared to be subordinate to the common good. With the result, the Directive Principles contained in articles 39 (b) and (c) reducing the concentration of Wealth and ensuring the equitable distribution of material resources, have assumed overriding importance over the individual's fundamental rights under articles 14, 19 and 31. It is really a step forward for establishing a 'socialistic pattern of society.'

Since the political parties and the democracy are two relative terms, their role in fighting for and providing socio-economic justice to the people is an aligned matter. It is the political party which creates an awakening in the masses and makes them conscious of their rights and duties. This awakening in turn leads them to think for socio-economic justice. Today in India there are several political parties with their different aims and objectives but each propagating and promising to the countrymen a decent living with equal opportunities for growth. The Indian National Congress before its split in 1969 and also the Congress (R) afterwards have proclaimed, from time to time, for the socio-economic justice to the masses by removing poverty, hunger, untouchability and all sorts of disparities.

So also all other parties with leftist outlook like the Communist Party of India, C. P. I. (Marxist) and also S.S.P. and P.S.P. spoke for equality and a society far from exploitation and discrimination. Some other parties like Congress (O), Swatantra, Jansangh and Bhartiya Kranti Dal,¹ though expressing concern for the down-trodden, had different less radical programmes to achieve the desired goal. Similarly the Republican Party of India, Akali Dal and D.M.K. had their own programmes for achieving a society based on justice and equality. Today the Janta Party, B.J.P., C.F.D. Congress (1) and the Congress (J) all speak the same concern for the down trodden, social and economic justice and for filling the gap between haves and have nots. At least some of the programmes of each political party are concerned with reducing the disparities and inequalities and providing socio-
economic change to the common man. But in practice these parties have not gained much what they preached to the people on the eve of elections.

After independence, the role of Five Year Plans has been significant in making a 'socialistic pattern of society'. Since the Constitution has declared to make India a Welfare State, the planning of the country has aimed at reducing the disparities and making a social setup based on equal status and justice. The Government, therefore, through the process of Five Year Plans have attempted not only to make the resources available for the economic reconstruction of the country, but to prepare the people to start a social revolution—a revolution that will, indeed, enable the countrymen for their all-round development. Only then they will get justice—both economic and social. In different spheres each successive Plan has so far played a distinctive role in achieving the assigned goal. But that is not still in sight. Plans are failures to some extent in reducing the existing inequalities in the society and completing the process of socio-economic transformation.

Despite all these promises and performance in practice the things are different. On the social plane so long as there is existence of backward classes and the so called untouchables in the society, the 'social justice' can never be ensured to all. Therefore, the removal of all such inequalities and the availability of equal opportunities to all citizens in social affairs is highly essential. Allied with this social problem is the problem of economic structure of society. Many a social evils are the off-springs of economic backwardness of the masses. The poverty postulates crimes which ultimately perverts the social system.

The defective system of production and distribution creates excessive poverty on one hand and excessive richness on the other. It, therefore, implies the exploitation of masses and the growth of unequal classes. Thus the Harijans have to suffer on dual fronts—social and economic, in this way an economic problem becomes a social problem. In a caste-ridden and economically imbalanced Indian society the declaration of 'socio-economic justice' would be effective only through 'protective discrimination'. It means that socially, economically and educationally weakers sections of the society will have to be given certain privileges as an equalizer so that they may avail the advantages of
the guaranteed freedoms as an equal partner of the society. No doubt certain privileges have been ensured to them but their faulty implementation has not brought the desired results.

The practical aspect of equality includes two distinct things, viz. 'Equality in law' and 'equality in fact'. While the former has been guaranteed by a number of constitutional provisions and several allied legislations, as discussed earlier, the latter denotes the real state of affairs prevailing in the social, economic, cultural and political system of India. Article 14 of the Constitution clearly denotes as to what extent the citizens have been guaranteed 'equality before law' and 'equal protection of law'. All are equal before the law. The 'equality in fact', on the other hand, is the treatment of the majority and the minority communities in actual practice. This is quite different from the legal provisions. It can hardly be denied that despite the professed ends of the Preamble of the Constitution namely, 'Justice-social, economic and political', 'equal status', and the goal of the Directive principles of establishing a 'welfare State' the people of India are far from enjoying 'equality in fact'. Nor have the resolutions and claims of the Congress Government regarding a 'socialistic pattern of society' and equality brought the people much nearer to it. 'Equality in fact' can never be achieved unless all those factors which promote social and economic inequalities are abolished. As a matter of fact, 'equality of law' is useless unless 'equality in fact' is also achieved. This is wanting under the present day circumstances in India. A true democracy cannot exist in the midst of social evils, want, poverty and inequality. Therefore, the problem of inequality may be viewed in two ways. While one refers to the social inequality as a system of values and norms, the other is concerned with "the existing differences between individuals in terms of property, income or occupation."

Regarding Social Inequality, it can be seen that there is a gradual process of decline. Legal abolition of untouchability and a political commitment to secularism are the two chief changes in post independent India. But since caste has become a system of institutionalized inequality, it cannot be eliminated by a

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mere stroke of the pen. It has deep rooted effect in the Indian social system. No
doubt, inequality, in some form or the other, might exist as between one individual
and another, but not between one caste and another on the basis of birth as it is
today. Constitution also aims at eradicating this "statutorily established
differences between caste and caste or between class and class." But practically
untouchability has not yet been removed. It is also strange to note that the
untouchables themselves are living within a caste organization of their own. Like
the caste Hindus, the system of joint family and sub-caste are functioning among
them also. There is an infinite gradation of sub-castes and each claims superiority
over the other. Expansion of education has not contributed much in the abolition
of this social evil. Educated persons, sometimes, are found more fanatics towards
untouchability than the illiterates and frequently they use this weapon for their
vested interests.

Apart from this, the role of the political parties has been one of exploiting the
Harijans for propaganda purposes at election time with little real concern for their
welfare. The parties first create problems and then try to suggest their solutions.
They show their sympathies for the depressed classes in such a way that others
become conscious of the fact that untouchables are inferior in the society. A
complex develops in them. Is it not true that in this age of science and technology
work of Scavengers, Chamars, Dhobis and Telis, is not confined to the people of
these communities only? The sewage system in most of the cities and towns has
done away with the old dirty and unhealthy method of carrying night soil on
shoulders. The shoe factories owned by caste people have taken over the business
of Chamars, the laundaries are not confined to Dhobies only and similarly the oil
mills carry the business of Telis. The people of other castes have adopted most of
these professions. The ancestral or hereditary system of vocation or business is
dying gradually. But the so-called 'social reformers' of political parties, for their
political gains, always try to create issues in the name of reformation of depressed
classes and make them political victims. As a result social change in contemporay

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Indian society has become a complex process and that is why all the reformers from Raja Ram Mohan Roy to Mahatma Gandhi showed no miracles in eradicating untouchability fundamentally.

A true and successful democracy can be established only if the economic power of all citizens is approximately equal. Really existing Economic Inequalities and disparities in the Indian society are the root of all other inequalities. Economic inequality is an inherent characteristic of capitalist society. To get rid of this inequality at least, a classless society is needed. This can be possible only when capitalism is transformed into socialism. In a Welfare State property exists not solely for the owners, but for the society in general. Social ownership of property is, therefore, very imperative in today's circumstances of the country. Equitable distribution of wealth can promote sound economic relations within a community. For these constitutional provisions concerning 'Right to Property' will have to meet with radical changes. It will be better if this right is abolished in the interest of general public.

The Constitution of a country should not be deemed to be merely a legal document, but a document containing human aspirations. Therefore, besides dealing with mechanism of the government it has also to respect the desires of the people. On this depends its success. Since it is made by the people to achieve certain ends, the moment it is found that it cannot serve the intended purpose, people will not hesitate to change it. For a hungry man a Constitution is of no value if it serves only to perpetuate the institutions which stand in the way of his emancipation from servitude and poverty. Therefore, in the process of establishing an egalitarian society, based on social equality and economic justice, it will not be objectionable if the framework of the fundamental rights is suitably modified. In Golaknath's case the Supreme Court held:

“The concepts of liberty and equality are changing and dynamic and hence the notion of permanency or immutability cannot be attached to any of the fundamental rights”\textsuperscript{4}.

The concept of fundamental rights has to move with times, particularly when there is a conflict between social interests and individual rights. The conflict should be resolved by rational adjustment. The law is not a rigid system but a flexible instrument of social change as well as order. The morphology of the Constitution remains, but its content changes with the needs of changing times. Therefore, the State which seeks to survive must continually transform itself to the demands of men who have equal claims upon that common welfare which is its ideal purpose to promote.5

Otherwise to claim that there is equal opportunity in a society which encourages or permits great disparities in wealth and other means of social and political advancement is a travesty of facts. Justice Palekar in Keshavanand Bharthi vs. State of Kerala supported this view: “Freedoms are not intended only for the fortunate few. They should become a reality for those whose entire time is now consumed in finding means to keep alive”.6 In the same case, Justice Mathur observed:

“The concept of liberty or equality can have meaning only when men are alive today and hope to be alive tomorrow.”7 It is, therefore, established that the new task of achieving equality and freedom for the large part of the people is at the economic level. Economic inequalities should be minimised so as to bring them at least "within reasonable limits such as 1:10.”7

No doubt Indians have been enjoying Political Equality in terms of suffrage. But practically it should not be forgotten that mere casting of votes is not enough to claim political equality. Without economic equality political equality is a farce. Is it possible for a talented and able but poor man to contest a costly election? Without money all his hopes and ambitions are marred. Only those who are well up with enormous financial resources enter the political arena. They arrange to win by fair or foul means because they have lacs and crores to squander and purchase the votes. Ultimately Government is also formed of these people or who are aided by them in winning elections. It means actual political power is

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6 AIR 1973 SC 1461
7 Ibid.
concentrated in the hands of a few who have economic power. Don't we see in our own country? How many poor have ever won the elections? How many of them have been Ministers at the Centre or States? That is why now the Government had to think to aid the candidates in elections financially.  

Besides, the law courts have their own role to play in achieving the goal of socio-economic justice. They have to move with the times. Otherwise, there might arise a conflict between the legal rigidity of the law court and the flexible and progressive measures of the legislatures. As a result of their conflict the human development and social revolution might come to stand still leading to the denial of the hopes of the people in general. From 1967 to 1973 has been a period of some sort of confrontation between the progressive policies of the Government on the one hand, and the rigid attitude of the Supreme Court, on the other. Since the decision in Golak Nath case there have been uncertainties both in the legislative as well as judicial organs of Government. The constitution was tending to lose its meaning for the common man. Subsequent to this case, the cases of Bank Nationalization and the Abolition of Princely Privileges brought these two democratic organs into direct confrontation. These three decisions led to three constitutional amendments and ultimately to three supersessions of Supreme Court Judges. In the decision of Keshavanand Bharthi vs. State of Kerala, it is noteworthy that six judges wanted the past to be preserved in the name of the basic structure with no basic changes in fundamental rights and only six other judges conceded the supreme power of the people to fashion their destiny, without limits on their powers to amend the constitution. The judges are also the citizens of the country. They have to promote social change towards a democratic society. Despite their judicial aloofness they are participators with the rest of the nation in its objectives as well as its fortunes. They are engaged alongwith Parliament and the Executive in the great task of achieving socio-economic justice for the people.

A revolutionary judicial pronouncement forms a landmark in the onward march of society. Therefore, as an inalienable branch of the Government the Judiciary has to play a prominent role in the achievement of the social revolution. As a matter of fact the judges must not only look to the letter of the law but also to the
spirit of framers of the law. P.B. Gajendragadkar has quoted Cardozo's dictum regarding the duty of a judge:

“My duty as a judge may be to objectify in law not my own aspirations and convictions and philosophies but the aspirations and convictions and philosophies of men and women of my times.”

Therefore, the Judges must keep in view the words of the famous jurist M. R. Cohen who opined

“We too are men, and now we will live not as pollbearers of dead past but as the creators of a more glorious future. By all means let us be loyal to the past, but above all loyal to the future...”

In order to avoid any confrontation between constitutional organs the Parliament should make amendments in the Constitution to bar the courts from striking down progressive legislations which aim at reducing concentration of wealth and ensuring equitable distribution of material resources of the country. If it is not done soon then the judges may use their own arbitrariness and thus impede the progress towards the goal of the Constitution. What is, therefore, needed is that: in a democratic country, the Legislature, Executive and Judiciary must recognise that they are all servants of the public. None of them can function in an ivory tower; and, all of them, while discharging their respective duties, must respond to the legitimate hopes, aspirations and expectations of their fellow citizens.

All these three constitutional organs depend upon each other for proper functioning. Mutual cooperation is a must for efficient discharge of duties. It is a fact that the Judges also play their role "in shaping the contours of society even as the legislature and the executive, though less directly."

Obviously India is at the cross roads in the sphere of socioeconomic justice. A new order is struggling to be born. But in a society which is deeply imbeded in

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caste and parochial loyalties, the law and the courts have a prominent place to contribute to the social upliftment of the countrymen. They have to guide the efforts being made to improve the lot of the socially backward communities. In case the law ignores the poor, the poor will ignore the law. The law, therefore, must be harnessed to the task of national development and providing justice to the common man. U is justice which provides the process through which equality can be realized in practice. Actually: equality is important as a concept informing the relationship among men as men—that is, in their respective status and mutual regard for each other. But it is justice that provides the political condition for realizing this ideal. As a result a society which succeeds in establishing equality among its members can produce satisfactory democratic values. An unequal society always lives in fear and with a sense of impending disaster in its heart. Therefore, what is established is that only by eliminating existing social and economic disparities "through social ownership of property and by planning social and economic life in the interest of the whole community"13, can every tear from eve’y eye be wi ped away to a great extent.

It should also be made clear that the urge to revolt against all forms of inequalities is natural to man. But the revolutions do not occur in a day or two. They require time and patience. The essence of Indian culture is tolerance and humanism. They should, therefore, be the guiding principle for all the participants in the hard social struggle for establishing a 'Welfare State' in India. The people must have a sense of participation in this process, as a revolution is not a matter for one or two persons. It requires peoples' involvement, and their spontaneous and articulate support to the national crusade to achieve its cherished goal. If this is wanting, all the attempts to transform India by bringing about equality of status and material possessions will languish. It is presumptuous to attempt to change this old society only by making laws, unless it is assumed that one can change human nature by law.

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The peoples’ cooperation and participation can be possible only if they develop a feeling of equality and brotherhood in the process of national reconstruction. All elements promoting hatred and disintegration must be cast off from the society. The thinking of man like Shankracharya of Puri, a Hindu religious chief, that inequality is the essence of nature should be countered by rational, historical, scientific and philosophical arguments and should not be allowed to prevail. Further, Indians must learn to subordinate their self-interest to the common welfare. The privileges of some must give way before the rights of all. Similarly Justice A. N. Ray in Keshvanand Bharthi vs. State of Kerala observed:

“Social justice will determine the nature of the individual right and also the restriction on such right. Social Justice will require modification or restriction of rights under Part III.”

He has further held that scheme of the Constitution generally discloses that the principles of social justice are placed above individual rights and whenever or where ever it is considered necessary individual rights have been subordinated or cut down to give effect to the principles of social justice. Social justice means various concepts which are evolved in the Directive Principles of the State.

To ensure social justice what civil and economic rights will be permitted to the citizens in a given situation is a matter which has to be decided by the Legislature and the Executive. It is proper if in the case of former, no Legislature or Executive is allowed to curtail easily, unless there is war. There, should, however, be no comparable rigidity with regard to the latter if it is in the interest of social justice.

The road to the attainment of socio-economic justice is, in fact, not easy but it is long and hard. Nor it is strewn with roses. Every citizen of the country will have to subscribe to it whole heartedly. Mere slogans and speeches or even legislation can neither solve the problem nor promote the cause of socio-economic justice for the masses. It is, therefore, concluded that social inequalities can be removed after

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15 Ibid
sustained and cooperative efforts by the people. But the economic inequalities can only be reduced to a great extent through government measures. Political inequalities are amendable. Complete equality never was and never will be. Even the 'equality in law' cannot eliminate disparities in all respects completely. Therefore, 'equality in fact' or complete equality is beyond human reach as nature itself has created certain fundamental inequalities which a man can hardly overcome. He can simply minimise the man-made inequalities to some extent and in certain spheres. Those who, living in any part of the world, claim complete equality in all spheres of their lives is great hypocrites.

However, in the end, if the three constitutional organs have a relationship based on mutual respect, understanding and even tolerance, socio-economic justice to the citizens of the country may be ensured. Only as a result of these united efforts will the countrymen be able to enjoy to some extent 'equality in fact' in addition of 'equality in law'. Then only would the success of 'SOCIAL REVOLUTION' not be a distant dream. This will help to strengthen the integrity and solidarity of the nation today specially at a time when the problems of Assam, Punjab demand of Khalis-tan communal society have been playing havoc all over the country. Truly speaking it is Again "TRUST WITH DESTINY" and given our 'freedom' is in 'penal' we have to 'defend it with all our right.'