Equality As An Empty Principle

Posted on October 17, 2019

View this essay online:
https://academic-master.com/equality-as-an-empty-principle/

Introduction

Equality can be defined as all human beings enjoying an equal state regarding status, opportunities, and rights. The concept of equality is defined as an equal distribution of shared resources and equal rights over the joint resources of a society. All human beings, whether rich and strong or poor and weak, everyone must be treated alike as per the definition of equality. In liberal theories, they have given a special place to the concept of equality. These liberal theories present the concept of equality as “every human in this world is created equal.” These theories represent that no one is superior to anyone and everyone has the same rights. No one should be treated and considered as he is superior to others in any way. These thoughts are the main building blocks of a democratic society [1]. Non-discrimination or Equality has gained an important place in International law. [2]. Not just International Law, the principle of equality and discrimination has a significant place in the. Civil Rights Act[3].

But here rises a question about the concept of equality. Is equality a reality, or just an empty principle and a myth? In this essay, we will discus the idea of equality, its purpose and its practices in detail. Also, we will debate about the reality of equality as an empty principle.

Discussion

Almost every society constitutes a law to ensure that the state practices equality and provides equal rights and opportunities to every human being. The concept of equality aims to protect the different issues about the rights and differences of people by keeping every nation of any race, gender, religion, or colour as equal participants in society. The purpose of equality and its presence in International laws is to ensure that every individual, every community, or every society is treated equally and they are not under any social oppression that could be in the form of biases [4]. There are four main models of equality. [5].

1. The formal model of equality
2. Substantive model of equality
3. The normative model of equality
4. Rational connection model of equality

The formal model of equality is about the treatment of the persons with equality who are alike. This

principle of equality suggests that all people should not be treated identically; instead, it suggests addressing the people differentially when all the members have relevance in differentiating individualities. In other words, there should be similar treatment for everyone who is situated in the same manner or has a similar situation. The substantive model provides a remedy to remove inequality by identifying the forbidden bases of discrimination when the state treats the related persons who are situated differently. The normative model of equality remedies the inequalities only when the differential treatment happens to keep the same procedure for differently situated people. The last model of equality, Rational connection model, proposes that not only every person that are sharing similar situation should be treated equally, in addition to that there should be a legislative ground with the rational connection. [6].

In research, the vacuity of equality is defined as morally the equality should be treating unalike things unalike to the extent of their unalikeness, and similar things should be treated alike. Justice is a synonym for equality. To treat justly means treating equally, and treating unjustly means treating with inequality. [7].

Although one could find many laws, rules and principles of equality and treating everyone alike, in reality, it is different. These principles of equality are mere principles written everywhere in every law book, and if we see the practical implementation of these laws, the results are shocking and disappointing. For example, if we talk about gender equality and its practices, the study on this topic has provided disappointing results. According to recent data, the majority of people believe that men and women are equal and should be treated equally, but most of them also said that equality is not being practised in the practical form, whether regarding political, economic, or social rights. There must be an oppressive social group that will harm the other social group by enjoying special treatment and more rights. Most of the time, men are treated as a superior group of women besides having so many laws and liberal theories about women's rights [8].

There should be some external values and references to identify which people and what treatments are alike and who should be treated alike if someone wants to justify the real meaning of the principles of equality. However, according to Peter Westen, if these external values and references are identified, the concept of justice and equality would be unneeded and superfluous. According to the researcher, the idea of equality confuses treating people, and the pomposity of equality should be eliminated from society [9]. According to Pauline C. Westerman, in law, there are two principles that explain the socially identified concept of equality. These principles are the non-discrimination principle and the principle of equal treatment.

They are primary sources to define the word equality as the uniform distribution of shared resources and equal rights on these shared resources. However, the results of this research showed that none of the principles help identify the concept of equality as a source of uniform distribution. To link the two principles of equality, i.e. equal treatment and non-discrimination, and the fair distribution of shared resources is only by adding the financial resources; a non-discrimination principle is a dubious ground [10]. In support of Professor Westen about the idea of equality, Greenawalt said that for the law

philosopher, the relationship between justice and equality and its nature is a complex phenomenon and causes mistaken judgements by judges and lawyers [11]. In reply and opposition to the idea of equality according to Professor Westen, Erwin Chemerinsky said in his article that Professor Westen provided us with the equality as an empty principle and even in America, equality should be defined as every man is born equal rather than ever human being is created equal. However, Professor Westen never proved this conclusion of equality as a hollow practice or a misleading concept [12].

He said in his article that besides having conflicts with Prof. Westen's ideology, the practical implementation of equality is not achieved. There should be some necessary amendments to the Equal Rights. The courts, politicians, and commentators should take more action rather than talking about equality. Just like the concerns of Prof. Westen, new research also supports the ideology of Prof. Westen that equality and its notion is an empty principle and it creates confusion. According to David A.S., in every law, quality has a significant place. Similarly, equality is a significant part of American Bankruptcy Law; it suggests that every creditor situated in a similar situation should be treated alike. However, this principle does not work for the bankruptcy concept well. The researcher says that the equality principle of treating the like alike should be terminated from the Bankruptcy Law. [13].

In response to the idea of equality by Prof. Westen, Steven J. Burton presents the method of a positivist idea of logical analysis to ensure the principle of equality and non-discrimination. According to him, the idea of equality Prof. Westen had was completely fine, but the way he analysed the idea of equality has a shortcoming. To ensure the treatment of equality and non-discrimination and the equality principle, the only capable method for analysis is a logical positivist method [14]. To prove the concept of Prof. Westen about equality and its principles, right or wrong, another researcher named Anthony researched by providing a hypothetical case and checked that case under the standards that was provided by Westen. By the results of his analysis, he supported the idea of equality given by Prof. Westen and regarded the work of Westen as the root of understanding the standards of measuring equality. Through the equal protection clause, the concepts of equality can be made operative. [15].

Conclusion

There is a significant importance of the concept of equality and non-discrimination in the laws. The principle of equality that defines that people situated in a similar situation should be treated alike is suggested as a hollow concept. Professor Westen researched this topic and suggested that the idea of equality is very misleading, and it creates confusion in judgement. He proposed to terminate the misleading concept of equality as it serves as big words in books and laws, but practically the result is an empty practice. Among some of the researchers who were against the Westen concept, many other researchers supported the idea of equality presented by Prof. Westen is right and justified.

Bibliography

Burton, S.J., 1982. Comment on" Empty Ideas": Logical Positivist Analyses of Equality and Rules. The Yale Law Journal, 91(6), pp. 1136-1152.

D'Amato, Anthony. "Comment: Is Equality a Totally Empty Idea?." Michigan Law Review 81, no. 3 (1983): 600-603.

Greenawalt, K. (1983). How Empty Is the Idea of Equality? Columbia Law Review, 1167-1185.

Chemerinsky, E. (1983). In Defence of Equality: A reply to Professor Westen. Michigan Law Review, 575-599.

Skeel, David A. Jr., "The Empty Idea of "Equality of Creditors" (2018). Faculty Scholarship. 1724. https://scholarship.law.upenn.edu/faculty_scholarship/1724

Pro Bono Australia. (2017). Gender Equality in Principle But Not in Reality – Report | PBA. [online] Available at: https://probonoaustralia.com.au/news/2017/03/gender-equality-principle-not-reality-report/ [Accessed 14 Apr. 2018]

Westen, P. (1982). The Empty Idea of Equality. Harvard Law Review, 537-596.

Westerman, P. C. (2015). The Uneasy Marriage between Law and Equality. Laws, 82-90.

Yap, P.J. Four Models of Equality. Digital Commons @ LMU and LLS, (2005) p.63-100.

Peter Westen's "The Empty Idea of Equality" – The Calvinist International. (2015). The Calvinist International. Retrieved 14 April 2018, from https://calvinistinternational.com/2015/05/05/peter-westens-the-empty-idea-of-equality/

Morris I. The Strong Principle of Equality. Demokratia: A Historical and Theoretical Conversation on Ancient Greek Democracy and its Contemporary Significance (Princeton 1996). 1996 Nov 17:19-48.

Moeckli, D., Shah, S., & Sivakumaran, S. (2010). International Human Rights Law. Oxford University Press.

Friedman, J.W., 1986. Redefining Equality, Discrimination, and Affirmative Action Under Title VII: The Access Principle. Tex. L. Rev., 65, p.41.

Nikolaidis, Charilaos. The right to equality in European Human rights law: The quest for substance in the jurisprudence of the European Courts. Routledge, 2015.

Yap, P. (2013). Four models of equality in Common Law Asia. All Academic Inc… Retrieved from

https://hub.hku.hk/handle/10722/187166

1. Morris I. The Strong Principle of Equality. Demokratia: A Historical and Theoretical Conversation on Ancient Greek Democracy and its Contemporary Significance (Princeton 1996). 1996 Nov 17:19-48. ↑
2. Moeckli, D., Shah, S., & Sivakumaran, S. (2010). International Human Rights Law. Oxford University Press. ↑
3. Friedman, J.W., 1986. Redefining Equality, Discrimination, and Affirmative Action Under Title VII: The Access Principle. Tex. L. Rev., 65, p. 41. ↑
4. Nikolaidis, Charilaos. The right to equality in European Human rights law: The quest for substance in the jurisprudence of the European Courts. Routledge, 2015. ↑
5. Yap, P. (2013). Four models of equality in Common Law Asia. All Academic Inc... Retrieved from https://hub.hku.hk/handle/10722/187166 ↑
6. Yap, P.J. Four Models of Equality. Digital Commons @ LMU and LLS, (2005) p. 63-100. ↑
7. Peter Westen's "The Empty Idea of Equality" – The Calvinist International. (2015). The Calvinist International. Retrieved 14 April 2018, from https://calvinistinternational.com/2015/05/05/peter-westens-the-empty-idea-of-equality/ ↑
8. Pro Bono Australia. (2017). Gender Equality in Principle But Not in Reality – Report | PBA. [online] Available at: https://probonoaustralia.com.au/news/2017/03/gender-equality-principle-not-reality-report/ [Accessed 14 Apr. 2018] ↑
9. Westen, P. (1982). The Empty Idea of Equality. Harvard Law Review, 537-596. ↑
10. Westerman, P. C. (2015). The Uneasy Marriage between Law and Equality. Laws, 82-90. ↑
11. Greenawalt, K. (1983). How Empty Is the Idea of Equality? Columbia Law Review, 1167-1185. ↑
12. Chemerinsky, E. (1983). In Defence of Equality: A reply to Professor Westen. Michigan Law Review, 575-599. ↑
13. Skeel, David A. Jr., "The Empty Idea of "Equality of Creditors" (2018). Faculty Scholarship. 1724. https://scholarship.law.upenn.edu/faculty_scholarship/1724 ↑
14. Burton, S.J., 1982. Comment on" Empty Ideas": Logical Positivist Analyses of Equality and Rules. The Yale Law Journal, 91(6), pp. 1136-1152. ↑
15. D'Amato, Anthony. "Comment: Is Equality a Totally Empty Idea?." Michigan Law Review 81, no. 3 (1983): 600-603. ↑