

NON-DISCRIMINATORY CLAUSES IN THE CONSTITUTIONS OF BANGLADESH, INDIA AND SRI LANKA: A COMPARATIVE ANALYSIS

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Abstract

This article explores the non-discriminatory and equality clauses in the constitution of Bangladesh, India and Sri Lanka and attempts to analyze the basic form of the principle of equality recognized in these countries with a little reference to international law. Where the common discrimination on the ground of nationality is observed in the three constitutions, the issue of open-ended and close-ended clauses with enumerative and exhaustive grounds has also been considered to understand how it affects the fundamental concept of equality.

INTRODUCTION

A visit to the non-discriminatory clauses in the constitution of Bangladesh, India and Sri Lanka and their comparative study would at the very least desire a conceptual and elementary understanding of the non-discriminatory clauses and its ingredients and corollaries. Non-discrimination, along with the principle of equality before law and equal protection of the law, establishes the fundamental foundation for the effective enjoyment of basic human rights¹. According to Shestack, both equality and non-discrimination together “are central to the human rights movement.”² “Equality and non-discrimination are considered to be the positive and negative statements of the same principle.”³ “In other words, equality means the absence of discrimination, and upholding the principle of non-discrimination between groups will produce

¹ Equality and Non-Discrimination Under International Human Rights Law by Li Weiwei, Norwegian Centre for Human Rights, University of Oslo, pg no-01

² Jerome Shestack, “The Jurisprudence of Human Rights”, in Theodor Meron (ed), Human Rights in International Law: Legal and Policy Issues, 1984, p. 101.

³ Ann F. Bayefsky, “The principle of Equality or Non-discrimination in International Law”, 11 Human Rights Quarterly, 1990, p. 5.

equality.”⁴ Thus, the principle of equality is fundamental to a democratic society and it is also, therefore, well recognized that a strong corollary breathes between equality and non-discrimination.⁵ Equality has been described as a “treacherously simple concept”,⁶ albeit the broad range of different views and theories regarding the amorphous state of equality and non-discrimination⁷ has been employed by different national legal systems.⁸ Thus, it is apparent that through the process of non-discrimination, the principle of equality is applied and hence, it could be said that non-discrimination is the means to which equality is an end. Therefore, equality employ “the principle of non-discrimination as a self-standing principle of general application, without specific limitation on the circumstances in which it is applicable (except that it be in the public realm, broadly defined), and without limitation on the grounds on which the difference of treatment is challengeable.”⁹ This study would involve explorative analysis of the equality and non-discriminatory clauses in the constitution of Bangladesh, India and Sri Lanka to unveil their conceptual similarities of the principle of equality and non-discrimination with reference to the amorphous state of equality recognized as the basic concept in the paradigm of international law. Further, the light would be thrown upon the edifices built upon the basic concept of equality as non-discriminatory clauses by these nation-states (Bangladesh, India and Sri Lanka) to suit their domestic needs and requirements and also the resemblance of their approach towards the theories of equality.¹⁰ The ancillary additions and the subtractive

⁴ Equality and Non-Discrimination Under International Human Rights Law by Li Weiwei, Norwegian Centre for Human Rights, University of Oslo, pg no-07

⁵ See, for example, Grant, Evadre. “Dignity and Equality”, *Human Rights Law Review*, Vol. 7, No.2, 2007, p.300; McCrudden, Christopher. “Equality and Non-Discrimination” in Feldman, David (ed.) “English Public Law”, Oxford University Press, Oxford, 2004, pp.581 – 668.

⁶ Holtmaat, Rikki. “The Concept of Discrimination”, *Academy of European Law Conference Paper*, 2004, p.2, (available at: http://www.era.int/web/en/resources/5_1095_2953_file_en.4193.pdf).

⁷ For example, the International Human Rights Law contained within UN Conventions and Declarations jurisprudence, and the law of countries such as the UK, the USA, Canada, South Africa or Ireland.

⁸ See, for example, the early interpretation of the “Equal Protection Clause” by the Supreme Court of the USA in *Plessy v Ferguson* 163 U.S. 537 (1896).

⁹ The Concepts of Equality and Non-Discrimination in Europe: A practical approach, EUROPEAN NETWORK OF LEGAL EXPERTS IN THE FIELD OF GENDER EQUALITY, Christopher McCrudden and Sacha Prechal European, European Commission Directorate-General for Employment, Social Affairs and Equal Opportunities Unit G.2, by the European Commission under the framework programme PROGRESS (Decision 1672/2006/EC of the European parliament and the Council, OJ L 315/1 of 15.11.2006).

¹⁰ Theories of Equality: A Critical Analysis Author(s): Louis Pojman Source: *Behavior and Philosophy*, Vol. 23, No. 2 (Summer, 1995), pp. 1-27 Published by: Cambridge Center for Behavioral Studies (CCBS), “Several different concepts go under the name equality and indicate the functions that the concepts play in political thought, ranging from the purely formal notion, first set forth by Aristotle, to more substantive notions of economic, welfare and resource egalitarianism. We can divide up the various types into three main categories: formal, substantive and metaphysical. The following chart indicates the resulting classification. Conceptions of Equality:1) Formal Aristotle’s Notion of Formal Equality, Equal Consideration, Presumptive Equality, Legal Equality, Moral Equality,2) Substantive: Absolute, Welfare Opportunity, Need-Satisfaction, Utility Resource, Economic Power, Political/Democratic 3) Metaphysical: Religious, Non-Religious. Substantive equality can be sub-divided into two

trimmings to the empty state of equality performed by these nation-states would carve out their own rational understanding of the concept of equality and non-discrimination clauses imbedded in their respective constitutions. To what extent these understandings overlap and override each other and the basic understanding recognized by the international law would be the main focus of this study. At the first sight, the equality and non-discriminatory clauses imbedded in the Constitution of Bangladesh would be considered, following the equality and the non-discriminatory clauses enshrined in the Constitution of Sri Lanka and lastly, in the Constitution of India.

BANGLADESH AND EQUALITY

The Constitution of Bangladesh endeavors to prohibit discrimination and promote equality through its Part II and Part III, being ‘Fundamental Principles of State Policy’ and ‘Fundamental Rights’ respectively. Under fundamental principles of state policy, Article 19¹¹ prescribes equality of opportunity which has been stated as follows:

“19. (1) The State shall endeavour to ensure equality of opportunity to all citizen....”

Albeit not judicially enforceable, the Constitution directs the state to apply these principles in the interpretation of the laws and thus, these fundamental principles of state policy form the basis of the state. Article 8(2) specifically provides that these principles “shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable.”¹²

The fundamental rights under Part III in the Constitution of Bangladesh, a feature of Universal Declaration of Human Rights, 1948, have imbedded articles 27, 28 and 29 which

types: equality of opportunity (starting points) and outcomes (end points), and the latter can be further divided into resource, welfare and absolute equality (this being an extreme form of either of the other equalities).”

¹¹ The Constitution of People’s Republic of Bangladesh, Article 19.

¹² Article 8, The Constitution of People’s Republic of Bangladesh.

have been guaranteed to provide equality before law, non-discrimination on certain specific grounds and equality of opportunity in public employment. The equality under the constitution of Bangladesh has been treated as the formal equality approach and the Aristotle's concept that is to treat similar and like people equally."Equals are to be treated equally and unequals unequally."¹³ In *Parveen v. Bangladesh Biman*¹⁴, the Supreme court held that the retirement age of the petitioner would be equal to that of male employees in Bangladesh Biman. This formal approach aims at the eradication of the discrimination in order to have equality of outcomes which is a substantial and progressive conception of the principle of equality. In *Sheikh Abdus Sabur Vs. Returning Officer, District Education Office-in-Charge, Gopalgong others*¹⁵, it was held that 'equality before law' should not be considered in its absolute nature to hold that everyone should be treated alike before law irrespective of the disadvantaged positions of various groups rather it should be interpreted to mean that like people would be treated alike and on similar stand.

Article 27 in the Constitution of Bangladesh is a fundamental right guaranteed as follows:

"27. All citizens are equal before law and are entitled to equal protection of law."

Article 27 is the combination of the English and American approaches of equality i.e. equality before law and equal protection of the laws respectively. It guarantees protection to all the citizens to have equality before law and equal protection of law. Thus, the apparent discrimination in this non-discrimination clause is on the basis of citizenship. Therefore, where a person is not a citizen, he would not be guaranteed such protection. Obviously, these fundamental rights enshrined in the Constitution are the form of the basic human rights inherent in every human being, however, these guarantees of protection of human rights at the domestic level do not expand for the protection of all human beings rather are confined and cabined only to the protections of the citizens. This is again the narrowing down of the

¹³ Aristotle's Nicomachean Ethics (Book V) as a definition of "justice." "Injustice arises when equals are treated unequally and also when unequals are treated equally.

¹⁴ *Parveen v. Bangladesh Biman*, [1996]48 DLR at 132-136

¹⁵ *Sheikh Abdus Sabur Vs. Returning Officer, District Education Office-in-Charge, Gopalgong others*, 41 DLR (AD) 30

amorphous state of the concept of equality existing at the basic level. Article 28¹⁶ and 29¹⁷ also project the protection of citizens from discrimination on the grounds specifically mentioned. Thus, the definition of ‘discrimination’ in this sense, lays down only those discriminations which are done on the basis of the specified grounds. The enumerative list of the grounds enables the state to ignore discrimination of any other form or on any other ground such as nationality, disability etc. This edifice built upon the concept of equality through close-ended non-discrimination clause throws light upon the limited scope of equality thus, fulfilling it only partially and avoiding its substantial progress.

RIGHT TO EQUALITY IN SRI LANKA

A constitution protects basic human rights at the domestic level. Article 12 of the Sri Lankan constitution guarantees right to equality as follows:

“12. (1) All persons are equal before the law and are entitled to the equal protection of the law.

(2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any such grounds:.....”

¹⁶ Article 28 stipulates as follows: “28. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth. (2) Women shall have equal rights with men in all spheres of the State and of public life. (3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution. (4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.”

¹⁷ Article 29 stipulates as follows “29. (1) There shall be equality of opportunity for all citizens in respect of employment or office in the service of the Republic. (2) No citizen shall, on grounds only of religion, race, caste, sex or place of birth, be ineligible for, or discriminated against in respect of, any employment or office in the service of the Republic. (3) Nothing in this article shall prevent the State from – (a) making special provision in favour of any backward section of citizens for the purpose of securing their adequate representation in the service of the Republic; (b) giving effect to any law which makes provision for reserving appointments relating to any religious or denominational institution to persons of that religion or denomination; (c) reserving for members of one sex any class of employment or office on the ground that it is considered by its nature to be unsuited to members of the opposite sex.”

Thus, article 12 guarantees non-discrimination and equality to all persons and prohibits discrimination against citizen on the grounds of race etc. or 'any such grounds'. The principle of Article 12 maintains that all like persons shall be treated alike and there should be reasonable classification distinguishing between like and unlike people.¹⁸ Thus, reasonable classification is not prohibited rather class legislation is forbidden. Also, it was held¹⁹ that "though Article 12 prescribes equality before the law and equal protection of the law, it has to be recognized that equality in any literal or abstract sense is not attainable."

Further, Article 12 is an open-ended provision which signifies that discrimination not only on the grounds enumerated by the clause but also on any other such ground is prohibited. This resembles the basic equality sense to prohibit discrimination of any form. However, an apparent discrimination by this non-discrimination clause is again visible through the protection guaranteed only to the citizens. But, article 12(3) manifests certain amount of protection to all persons rather than confining it only to the citizens. Moreover, a broader purview could be sensed in an open-ended non-discriminatory provision than a close-ended as the former covers more form of discriminatory prohibitions than the latter.

Also, under the Directive Principles of State Policy, Article 27 (6) guarantees as follows:

"(6) The State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation."

The above provision protects citizens against discrimination on the grounds specifically mentioned. However, being under Directive Principles of State Policy, these are not judicially enforceable, though are fundamental.²⁰

NON-DISCRIMINATION AND EQUALITY: THE INDIAN CONSTITUTION

The constitution of India has enshrined the non-discriminatory clauses under article 14 in general form and with specific prohibition of discrimination under article 15, 16 and 17.

¹⁸ Kalidasage Roshan Chaminda Vs Kurunegala Plantations Limited and others, SC. FR. Application No. 24/2013
¹⁹ Paliyawadana V. Attorney General and two others, Supreme Court, Iismail j., Sharvananda j. and Wanasundera j, S.C. No. 12 of 1979 27th April, 1979, pg 65

²⁰ See Article 29. *The provisions of this Chapter do not confer or impose legal rights or obligations and are not enforceable in any court or tribunal. No question of inconsistency with such provisions shall be raised in any court or tribunal.* (Principles of State Policy and fundamental duties not justifiable)

“Article 15 is an instance and particular application of the right of equality provided for in Article 14. While Article 14 guarantees the general right, Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances.”²¹ *Right to equality has been seen from the very inception of the Indian constitution as one of the most basic, fundamental and foundational human rights. Article 14 guarantees equality to all persons as follows:*

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

The afore-mentioned article is having two parts similar to that of the Bangladeshi and Sri Lankan constitution. The first part guarantees ‘equality before law’ by the state and the second affirms equal protection of laws. The former maintains that the state shall not discriminate any person, thus, reflecting a negative approach²² while the latter prescribes positive affirmation by the state to establish equality in the formal approach i.e. “like should be treated alike” and unequals should be treated unequally.²³ Article 14 is guaranteed to all persons²⁴ similar to that of Article 12 of Sri Lankan constitution. Thus, the discrimination on the basis of nationality is avoided in these two countries and the opposite can be noticed in the case of Bangladesh which guarantees equality protection only to its citizens.

Additionally, Article 15²⁵ protects the citizens from any kind of discrimination that has been mentioned specifically²⁶ which includes religion, race, caste, sex or place of birth or any of them. Article 16 states ‘equality of opportunity in matters of public employment’ and prevents the State to do any kind of discrimination²⁷ on the grounds of ‘religion, race, caste, sex, descent, place of birth, residence or any of them. These are also the closed provisions on the grounds of discrimination which are similar to that of the non-discriminatory clauses under the constitution of Bangladesh thus, giving narrow scope to the principle of equality. However, it also includes

²¹ Dasaratha v. State of A.P., AIR 1961 SC 564).

²² Sri Srinivas Theatre V. Govt. of Tamil Nadu, AIR 1992 SC, at 1004, “.. equality before law is dynamic concept stating that none shall be above the law and that there is an obligation upon the state to bring through the machinery of law, a more equal society.....”, See also, WADE & PHILLIPS, *CONST. & ADM. LAW*, 87 (1977).

²³ E.V. Chinnaiyah v. State of A.P., (2005) 1 SCC 394

²⁴ Faridabad CT. Scan Centre V. D.G Health services, AIR 1997 SC 3801: (1997) 7 SCC 752, it was held that the benefit of equality before law and equal protection of law accrues to every person in India whether a citizen or not. “We are a country governed by the rule of law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before law and equal protection of the laws.”

²⁵ *Art. 15 guarantees” Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.”*

²⁶ Preeti Srivastava (Dr) v. State of M.P., (1999) 7 SCC 120

²⁷ Govt. of A.P. v. P.B. Vijayakumar, (1995) 4 SCC 520

positive and affirmative action for the appeasement of the disadvantaged classes which shows substantial approach of equality and non-discrimination focusing on equality of outcomes. Article 17 of the Constitution abolishes the practice of untouchability. Untouchability has been a severe form of discrimination in the Indian society against certain group of people who were treated as outcasts. In order to promote equality in the real sense, it was necessary to have a non-discriminatory clause abolishing untouchability as a practice and making it a punishable offence.²⁸ Further, article 29(2) also as a fundamental right prevents the state to discriminate for admission of any citizen in any educational institutions maintained or aided by the state. It states as follows:

“No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.”

Article 38(2) also directs the state under Part IV of the Directive Principles of State Policy of the Constitution to strive for a welfare state by eradicating inequalities and thus, promoting equality.

It states as follows:

“Art.38(2): The State shall, in particular, strive to minimize the inequalities in income, and endeavor to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.”

Article 39(A) provides that *“the State shall ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”* Thus, the state is also under obligation to secure equality in various forms as manifested through various non-discriminatory and equality clauses in the Constitution. It is also germane to observe at this point that the protection of equality in all these forms have been guaranteed only to the citizens and thus, the discrimination on the basis of nationality is common and legal under the domestic paradigm of the equality concept and definition.²⁹ This feature has been almost similar in all

²⁸ Hadibandhu Behera V. Banamali Sahu, AIR 1961 Ori. 33.

²⁹ Equality Rights, A_HRC_WG.6_13_INDIA.AnnexII.doc

the three constitutions whereby the amorphous state of the concept of equality has been trimmed as concomitant to own benefits and suitability. Thus, it is quite apparent that a citizen of a nation will lack basic constitutional protection of human rights as fundamental rights and will be discriminated if he crosses his nation's border. Thus, the concept of equality is actually determined by the boundaries of the nation-state and what rights do you have as a human being is subject to the nationality of a person as sarcastically it is one of the attributes that a person is born with.

AN APPROACH OF EQUALITY VIA HUMAN RIGHTS

The principle of equality and non-discrimination is the foundation of international human rights law. Article 2 of Universal declaration of Human Rights also recognizes the principle of equality and non-discrimination as its fundamental element and thus, prohibits discrimination on the grounds "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth and other status." Thus, these grounds are not exhaustive and hence, discrimination on any other status, in any other form and on any other ground is prohibited. Moreover, Article 1(1) of International Labor Organization prohibits discrimination on the basis of specified grounds and thus, guarantees equality among equals.³⁰

DISCUSSION

Do these three countries show the similar trend in recognizing the principle of equality or they have different edifices built upon a similar concept? A glimpse shall be given to directive principles following fundamental rights imbedded in the Constitution of these three countries. Two of the three countries examined, i.e. Bangladesh and Sri Lanka, have ensured equality of opportunities through the fundamental state policy in the Constitution.³¹ In India, the difference stands as under Article 38(2) not only equality of opportunities but also, equality of status and facilities have been considered giving it a broader paradigm as compared to the former two countries. This gives an idea as to how equality is not confined to only the opportunity, but

³⁰ The right to equality and non-discrimination, <http://www.humanrights.is/en/human-rights-education-project/human-rights-concepts-ideas-and-fora/substantive-human-rights/the-right-to-equality-and-non-discrimination> [accessed 09 October 2017]

³¹ Article 19 in the Constitution of Bangladesh and Article 27(6) in the Constitution of Sri Lanka

rather it spreads and spawns to the equality in outcomes which could be made possible by keeping in view all the aspects of a human life. This does not bode well for Bangladesh³² and Sri Lanka³³ which are circumscribed by myriad types of inequality as in India.³⁴

The fundamental rights enshrined under the Constitution of these three countries show a rather different picture. While as afore-stated and discoursed, Sri Lanka has a broad ambit of its non-discrimination clause, au contraire, the rest two countries reveal a narrow scope. This is through the main argument which is an open-ended clause reflecting the actual sense of equality then a non-discrimination clause confining only to certain heads. This is why it is argued that equality clauses and the non-discrimination clauses stand on different foot when it comes to their general nature. While equality clauses are more general in nature, non-discriminatory are confined and specific. However, this difference is not constant, as observed in the case of Sri Lanka where the non-discriminatory clause is an open-ended clause and therefore, include prohibition of discrimination against any form or ground. This is similar to the equality protection clause under the Universal Declaration of Human Rights, which is also open-ended. In the specific clause case of India and Bangladesh, the grounds which have been specified do not encompass people who are subjected to discrimination on the basis other grounds such as disability etc. This has narrowed down the real essence of equality being confined and compartmentalized. Moreover, the general equality clauses in the Constitutions of India and Sri Lanka, respectively, have protection granted to the people irrespective of their citizenship, while Bangladesh has guaranteed the so-called general equality clause only to those who are the citizens of Bangladesh. This reflects the shrunk form of equality in Bangladesh, which lacks in the proper protection of individuals through various aspects, i.e. from fundamental state policies to the excessively narrowed non-discrimination clause and specific general clause (though a paradox states the exact form of the clause guaranteeing equality in Bangladesh).

³² For future reference see [Extreme Poverty, Growth and Inequality in Bangladesh](#) by Joe Devine, Geof D. Wood, Shamsul Alam

³³ For further reference see, [Endless Inequality: The Rights of Plantation Tamils in Sri Lanka](#) by [Yogeswary Vijayapalan](#)

³⁴ For reference see, [India: Development and Participation](#) by [Jean Drèze](#), [Amartya Sen](#)

Further, what could be commonly observed throughout the Constitutions of the aforementioned countries is the discrimination on the ground of nationality under the non-discriminatory clauses. Indeed, the fundamental rights are the national form of human rights, these clauses under fundamental rights expressly bars humans belonging to other nations from enjoying these rights. In a conclusive sense it could be drawn that the definition of equality changes from nation to nation. Then what is the essence of equality? Rather what is equality?

THE ESSENCE OF NON-DISCRIMINATION: CONCLUSION

Thus, there are clauses referred as equality clauses, which are basically non-discriminatory provisions i.e. those clauses which aim to prevent discrimination of certain kind whereas equality clauses in true sense would directly encompass prohibition of discriminations and inequalities of all forms without any kind of limitations or specifications. Equality, in its essence, refers to equal treatment and non-discrimination.³⁵ With this basic understanding, equality as a concept in law can be seen with three dimensions and forms: equality before law, equality in law and equal protection of law. In Mill's³⁶ words, equal protection of laws stands for "giving equal protection to the rights of all." Equality before law is nothing else but equal application of laws. R.E. Flathman states that "equally" refers to the one and the same rule and the equal treatment is what is perceived according to the rule.³⁷ Equality in law provides that law should be free from any preferential or discriminating clause.³⁸ However, the positive action by the state towards the disadvantaged groups is a substantial and formal approach to equality. This cannot be treated as discrimination. However, Chipman maintains that there can be three form of discrimination: "Formal discrimination - a law is formally discriminatory if it applies only to those subjects who satisfy some additional condition (i.e. additional to being subjects).....", "advantage discrimination - a law is advantage discriminatory if those to whom it applies are advantaged/ disadvantaged as a result, relative to whom it does not apply...." and "psychological discrimination - a law is psychologically discriminatory to a particular person if that person feels an indignant hurt concerning the basis on which the law is applied to him

³⁵ Wojciech Sadurski, Equality, Law and Non-Discrimination, 1981 Bull. Austl. Soc. Leg. Phil. 113, 137 (1981)

³⁶ J.S. Mill, 'Utilitarianism', in Mill's Ethical Writings, New York, 1965, p. 319-320;

³⁷ R.E. Flathman, 'Equality and Generalization, a Formal Analysis' in J.R. Pennock and J.W. Chapman, eds., Equality, New York, Atherton Press, 1967, p. 42.

³⁸ J.C. Smith, Legal Obligation, London, The Athlone Press, 1976,

or her....”³⁹ The concept of equality as rationality⁴⁰ has been triggered by these nations through their respective constitution in order to promote equality in actual sense⁴¹ by an egalitarian understanding of good life and satisfactory outcomes for the most disadvantaged groups.⁴² Though a diverse spectrum of theories inhibiting the concept of equality exists, the central tenets of the basic concept put forward by the three constitutions submit the same agenda of formal and substantive approach of equality. The common discrimination not considered as discrimination under these laws of the respective lands is the discrimination on the ground of nationality. Notwithstanding that the fundamental rights under these constitutions represent savior of basic human rights, these human rights are available to only national human beings discriminating the non-national ones. Further, where an equality clause ends with close-ended grounds, it limits the scope of equality narrowing down its essence, and thus, indirectly permitting other forms of discriminations and transforming into a non-discriminatory clause. Therefore, it could be clearly manifested that though the concept of equality as understood in general and basic sense is similar, however, the edifice built upon the concept through which a country formally protects people is not a protection as a whole rather a shrunk form of equality and with different state of equality and non-discrimination clauses in different scenarios, it is really difficult to solidify the amorphous state of equality irrespective of any specific constitution of any nation-state.

³⁹ Lauchlan Chipman, Equality, Law and Non-Discrimination - A Comment, 1981 Bull. Austl. Soc. Leg. Phil. 138, 144 (1981)

⁴⁰ *ibid*

⁴¹ Equality and Non-Discrimination Under International Human Rights Law by Li Weiwei, Norwegian Centre for Human Rights, University of Oslo

⁴² Equality and Non-Discrimination” in Feldman, David (ed.) “English Public Law”, Oxford University Press, Oxford, 2004