

Equality

- The concept of equal status and equal treatment for all persons
- Should equality be absolute?
- Is a certain degree of in- equality acceptable?

Aristotelian Origins & Modern Theory

- Rejected the idea of absolute equality
- Only equals should be treated equally
- Individual differences should be reflected in all social and political arrangements
- Aristotle introduced the idea of developing relevant criteria to determine the circumstances under which individuals could be treated differently
- Modern equality theory accepts Aristotle’s premise that justice involves treating individuals alike, except where “relevant differences” require that they be treated differently.
- Defining “relevant differences” is a difficult process
 - Child labour
 - Same tax on poor as on rich
 - Distribution of power, authority based on merit. How to define merit?
- Plato felt that in a perfect society perfect equality would prevail
- Equality has long been considered an essential part of justice. However, a society in which all individuals receive identical treatment is neither practicable nor desirable
 - Young offenders, mentally infirm, affirmative action
- We are not born equal. These differences consequently produce social and economic differences
- For important social objectives some people are treated differently
- Acknowledged is the legitimacy of differential treatment of people so long as the treatment is based on “relevant differences”. This differential treatment must be applied equally to all members of the group being treated differently. (Indian Act, natives)
- Who? Young people, mentally unstable, different cultures...
- How? In order to respect and protect the rights of people different laws, rules and exceptions must be made

Equality Before the Law

- Refers to guarantee of equality in the administration of the law before the courts
- Has nothing to do with the enforcement of the law by the courts
- Has become more of a procedural equality (formal equality – equality of treatment)
- Equality before the law is not concerned with the fairness of the content of the law and could be seen as an empty guarantee.
- Three important constitutional cases have considered this concept: R. v. Gonzales, (1962), R. v. Drybones, (1970), Lavell v. Attorney General of Canada, (1974)

Equality Under the Law

- Based on the above cases it was recognised that the idea of equality before the law (formal guarantee of equality of treatment) did little to actually guarantee equality.
- When drafting the Charter of Rights it was hoped that Section 15 would ensure that the content of laws would be more closely scrutinised with an eye to equality.
- Equality under the law is intended to guarantee more than just equal treatment in the administration of the law.
- It was introduced in the Charter as a guarantee of equal treatment in the context of the law
- Provided for substantive equality (equality of result) as opposed to merely procedural (formal) equality (equality of treatment)

Discrimination

- The concept of equality and various equality laws are an attempt to counter situations in which the idea of “relevant differences” has been taken too far
- Discrimination is the intentional or unintentional distinction made between individuals or groups based on personal characteristics of the individual or group
- This differential treatment must also be prejudicial, unfavourable or unfair in some way and generally imposes a burden or disadvantage on one group but not on others
- Section 15 of Charter deals with Equality Rights and prohibited grounds for discrimination
- Until 1989 courts disagreed on whether a law should be deemed “unreasonable” before it could be declared “discriminatory”
- In Feb 1989 the Supreme Court of Canada stated that it was not necessary to show that a law was unreasonable for it to be discriminatory under S. 15 of Charter