

Article 15

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15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

- (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them
- (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to
 - (a) access to shops, public restaurants, hotels and palaces of public entertainment; or
 - (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

- (3) Nothing in this article shall prevent the State from making any special provision for women and children
- (4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

- [(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30.]

- [(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29 shall prevent the State from making,—
- (a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and
- (b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.
- Explanation.— For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.

- Article 15 provides for a particular application of the general principle embodied in Article 14.
- When a law comes within the prohibition of Article 15 it cannot be validated by recourse to Article 14 by applying the principle of reasonable classification.
- It is when the discrimination is based upon one of the grounds mentioned in Article 15, the reasonableness of the classification will be tested under Article 14.
- The guarantee under Article 15 is available to citizens only and not to every person whether citizen or non citizen

- The first clause of Article 15 directs the State not to discriminate against a citizen on grounds only of religion, race, caste, sex or place of birth or any of them.
- The second clause prohibits citizens as well as the States from making such discrimination with regard to access to shops, hotels, etc. and all places of public entertainment, of public resort. wells, tanks, roads, etc
- The third clause empowers the State to make special provisions for the protection of women and children.
- The fourth clause which was added by the Constitution (1st Amendment) Act, 1951, enables the State to make special provisions for the protection of the interests of the Backward Classes of citizens and is therefore, an exception to Articles 15 and 29 (2) of the Constitution.

- By clause (1) of Article 15 the State is prohibited to discriminate between citizens on grounds only of religion, race, caste, sex, place of birth or any of them.
- The word 'discrimination means to make an adverse distinction or to distinguish unfavourable from others. If a law makes discrimination on any of the above grounds it can be declared invalid.
- Thus in *Nainsukhdas v. State of U.P.*⁶ a law which provided for elections on the basis of separate electorates for members of different religious communities was held to be unconstitutional.
- Similarly, in *State of Rajasthan v. Pratap Singh*, the Supreme Court invalidated a notification under the Police Act of 1861 which declared certain areas as disturbed and made the inhabitants of those areas to bear the cost of additional police stationed there but exempted all Harjans and Muslims.
- The exemption was given on the basis only of caste' or 'religion and hence was contrary to Article 15(1).

- Article 15(4) is another exception to clauses (1) and (2) of Article 15, it was added by 1st Amendment Act, 1951, due to decision in **State of Madras v. Champakam Dorairajan**
- In that case, the Madras Government had by a G.O. reserved seats in State Medical and Engineering Colleges for different Communities in certain proportions on the basis of religion, race and caste.
- The Government defended it for promoting social justice for all sections of people as required by Article 46.
- The Supreme Court held the G.O. void because it classified students on the basis of caste and religion irrespective of merit.
- The Directive Principles of State Policy could not override Fundamental Rights.

- In another case
- **Jagwant kaur v. state of Bombay**
- an order requisitioning land for the construction of a Harijan Colony was held to be void under Article 15(1).
- To modify the effect of these two decisions, Article 15 was amended by the Constitution (1st Amendment) Act, 1951 and clause (4) was inserted.
- Under this clause, the State is empowered to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes.

- The provisions made in 15(4) is only an enabling provision and does not impose any obligation on the State to take any special action under it.
- It merely confers a discretion to act if necessary by way of making special provision for backward classes.
- A writ cannot be issued to the State to make reservation.
- The principle behind Art. 15 (4) is that a preferential treatment can be given validly where socially and educationally backward classes need it
- Article 15 (4) is not an exception but only makes a special application of the principle of reasonable classification.

- The class contemplated under the clause must be both socially and educationally backward.

Thus, under clause 15(4), two things are to be determined-

- (1) Socially and educationally backward classes
- (2) The limit of reservation.

Backward Classes is not defined in the Constitution.

Article 340, however, empowers the President to appoint a Commission to investigate conditions of socially and educationally backward classes. On the basis of the report of the Commission,

- the President may specify as to who are to be considered as Backward Classes.

Balaji v. State of Mysore, AIR 1973

- the Mysore Government issued an order under Article 15 (4) reserving seats in Medical and Engineering Colleges in the State as follows : Backward classes 28%, more Backward classes 20%, Scheduled Castes and Tribes 18%. Thus 68% of the seats available in the Colleges were reserved and only 32% seats were made available to the merit pool,
- Some of the candidates failed to get admission only because of the Government order
- The court held-The sub-classification made by the order between backward classes and more backward classes was not justified.
- Backwardness as envisaged by Article 15(4) must be both social and educational and not either social or educational.

- Though caste is a relevant factor, it cannot be the sole test for ascertaining whether a class is a backward class or not
- Poverty, occupation, place of habitation may all be relevant factors to be taken into consideration.
- Article 15(4) does not speak of 'castes' but only speaks 'classes' and 'caste' and 'class' are not synonymous.
- Thus the main defect of system adopted by State was that under it 90% of the population of State was backward.
- Reservation of 68% per cent of seats in technical institutions, such as Engineering and Medical Colleges to the exclusion of all other candidates if a single candidate from the ST is fraud
- National interest would suffer if qualified and competent students were excluded from admission
- special provision should be less than 50% how much less than 50% would depend upon the relevant prevailing circumstances in each case.

In Indra Sawhney v. Union of India

Mandal Commission case,

The Supreme Court by 6:3 majority held-

The sub-classification of backward classes into more backward for the purpose of Article 16(4) can be done but as a result of sub-classification the reservation cannot exceed more than 50 percent. The distinction should be on the basis of degrees of social backwardness.

In fact, such a classification would be necessary to help the more backward classes otherwise those of the backward classes who are little more advanced than the more backward classes might take away all the seats.

A. Periakaruppan v. State of Tamil Nadu

- Supreme Court held classification of backward classes on basis of castes is well within the purview of 15(4)
- provided those castes are shown to be socially and educationally backward.
- But Court advised that the Govt should not proceed on the basis that once a class is considered as backward, it should continue as backward class for all the times,
- Such an approach, would defeat the very purpose of rsrvtn
- The Govt should always keep under review the question of reservation of seats and only the classes which are really, socially and educationally backward should be allowed to have the benefit of rsrvtn
- Reservation of seats should not be allowed to become vested interest,
- The Govt decision in this regard is open to judicial review

State of A.P. V.U.S.V. Balaram,

- Supreme Court reiterated the same view and held that caste of a person cannot be the sole test for ascertaining whether a peculiar class or community is backward class or not,
- yet if an entire caste is, as a fact, found to be socially and educationally backward their inclusion in the list of backward classes by their name is not violative of Article 15(4),
- caste is also a class of citizens which may be socially and educationally backward. It does not mean that once a caste backward it will continue to be backward for all the time
- If they are able to obtain more seats on the basis of their own merit, it is the duty of the Govt to review the question of further reservation of seats for such groups.
- If once a class appears to have reached a stage of progress State will review such instances and revise list of backward classes
- Decision of the Government in this regard is a justifiable issue

K.S. Jayasree v. State of Kerala

- The State of Kerala appointed a Commission to inquire into and to report as to what sections of the people in Kerala should be treated as socially and educationally backward classes.
- On the basis of the report of the Commission, the Govt directed that **candidates belonging to families whose annual income was Rs, 10,000/- or above would not be eligible for seats reserved for backward classes in Medical Colleges.**
- The Supreme Court upheld the Government's direction and held-neither caste by itself nor poverty by itself is determining factor of social backwardness.
- Though poverty is not the sole test of backwardness yet it is relevant factor in the context of social backwardness. Thus, both caste and poverty are relevant in determining the backwardness of citizens

State of U.P. v. Predeep Tandon

U.P Government made reservation of seats for admission to Medical Colleges in the State in favour of candidates coming **from rural areas, Hill and Uttarakhand areas**, The Supreme Court held-The reservation in favour of candidates coming from rural areas is unconstitutional

but the reservation in favour of candidates coming from Hill and Uttarakhand areas is valid

The Hill and Uttarakhand areas are instances of socially and educationally backward classes of citizens. Backwardness is judged by the economic basis that each region has its own measurable possibilities for the maintenance of human members' standards of living and fixed property.

From an economic point of view, the classes of citizens are backward when they do not make effective use of resources, When large areas of land remain spares, disorderly and illiterate population whose property is small and negligible, the element of social backwardness is present.

When effective territorial specialization is not possible in the absence of means of communication and the technical processes as in the Hill and Uttarakhand areas, the people are socially backward classes of citizens. People in the Hill and Uttarakhand areas are also the educationally backward classes of citizens because lack of educational facilities keeps them stagnant and they have neither means and values nor awareness for education. The hill and uttrakhjand areas are inaccessible. There is lack of educational institutions and aids.

Rural areas cannot be the homogenous class . Their occupation is different. Population cannot be a class

Principal, Guntur Medical College v. Y. Roham Rao

- an important question arose before the Court as to whether a person belonging to Christian converts, who originally belonged to SC on reconversion to hinduism could claim the benefit of reservation of seats in a medical college under Article 15(4) of the Constitution.
- The Court held that a person whose parents belonged to a Scheduled Castes before their conversion to christianity could on reconversion to hinduism be regarded as member of SC only if he was accepted as member of that caste by the other members of the caste.
- On such acceptance, he would be eligible for the benefit of reservation of seats for Scheduled Castes in the matter of admission to a medical college,
- High caste girl marrying Scheduled Tribes-Not entitled to Reservation

- In *Dr. Neelima v. Dean of P.G. Studies A.P. Agriculture University, Hyderabad* it has been held that a high caste girl marrying a boy belonging to Scheduled Tribes is not entitled to the benefit of reservation available to Scheduled Tribes.
- The appellant was born in a Reddy caste which is a forward class and married to an Erukala Tribe boy one of the S T in the State of Andhra Pradesh.
- After marriage she sought admission to M.Sc. course in the Agriculture University, Hyderabad under reservation quota for Scheduled Tribes.
- The Court held that she was not entitled to get the benefit of reservation available to the Scheduled Tribes, Similarly,

- in Meera Kanweria V. Sunita, it has been held that if a female of high benefit of reservation under Articles 15 (4) and 16 (4) of the Constitution. In this case, an
- upper caste Hindu girl married a person belonging to S C
- The marriage was performed as per Vedic rites. Her marriage had been accepted by her Biradari husband 's family only. She was not accepted by the community of her husband
- Therefore, it was held that she could not acquire the status of Scheduled Castes and co not contest election on a seat reserved for Scheduled Castes. Mere acceptance of familyer husband is not sufficient. Strict proof of acceptance by community of husband

- In T.M.A. Pai Foundation v. State of Karnataka, and P.A. Inamdar v. State of Maharashtra, the Supreme Court held that the ***State could not make reservation of seats in admissions in privately run educational institutions. There, the admissions could be done on the basis of common admission test conducted by the State or on the basis of merit.***
- In Islamic Academy v. State of Kerala, the Court held that ***the State could fix quota for admissions to these educational institutions but it could not fix fee and also admissions could be done on the basis of common admission test and on the basis of merit***
- Article 15(5)-By the Constitution (93rd Amendment) Act, 2005, the Parliament inserted clause (5) in Article 15 with effect from 20-1-2006 to nullify the effect of these judgments:

Article 15(5)

- Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes in so far as ***such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions*** referred to in clause (1) of article 30.

Article 15(6)

(6) Nothing in this article or sub-clause (g) of clause (1) of article 19 or clause (2) of article 29

----- shall prevent the State from making,—

(a) any ***special provision for the advancement of any economically*** weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) in ***so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State,*** other than the minority educational institutions referred to in clause (1) of article 30,

which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent. of the total seats in each category.

- Explanation.— For the purposes of this article and article 16, "economically weaker sections" shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.]

Article 29 - Protection of interests of minorities

- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same
- (2) 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 16

- **16. Equality of opportunity in matters of public employment.—(1) *There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.***
- *(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.*

- *(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office 3[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.*
- *(4) Nothing in this article shall prevent the State from making 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.*

- 4[(4A) Nothing in this article shall prevent the State from making any provision for reservation 5[in matters of promotion, with consequential seniority, to any class] or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State.]

- 6[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

- *(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.*
- 1[(6) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category.]