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## CONSTITUTIONAL AMENDMENTS AND PROTECTIVE DISCRIMINATION UNDER ARTICLE 15

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### ABSTRACT

This paper examines the relationship between constitutional amendments and the concept of protective discrimination under Article 15 of the Indian Constitution. Article 15 is critical in prohibiting discrimination based on religion, race, caste, sex, or place of birth, while also permitting affirmative action to uplift historically marginalized communities. The research explores the origins of Article 15, focusing on the framers' intent to create a balanced framework that promotes both equality and social justice.

The study then analyzes how constitutional amendments and judicial interpretations have influenced the development of protective discrimination under Article 15. Key cases, such as *Indra Sawhney v. Union of India* and *Ashoka Kumar Thakur v. Union of India*, are discussed to illustrate the judiciary's approach to reconciling the principles of equality with affirmative action.

Additionally, the paper addresses ongoing debates about extending protective discrimination to economically weaker sections and other groups, exploring the potential impact of such measures on the constitutional framework. The research argues that while affirmative action is essential for achieving substantive equality, it must be carefully balanced to prevent further societal divisions.

This paper contributes to the broader discourse on the dynamic interplay between constitutional amendments and the judiciary's role in shaping protective discrimination, emphasizing the need for the Constitution to remain a living document that adapts to the evolving needs of Indian society.

**Keywords:** Constitution law, Amendments, Protective discrimination, Article 15, Rule of law

## Introduction

Equality is central to the worldwide pursuit of democratic ideals. India is also following this path. Traditionally, racial prejudice permeates our society, representing a complex system. India has an amalgamation of many historical practices and religions, resulting in a vigorous mix of languages, faiths and civilizations. But any democratic system faces the difficult problem of reconciling two conflicting political ideologies: one believes in treating everyone equally under the law regardless of their background, and the other advocates justice in society that is, even if that means not everyone is treated equally well. Years ago, the caste system in India divided people into many groups based on heritage.<sup>1</sup> Similarly, the narrative of historical loss can vary across countries and civilizations, often because of differences in religious affiliation. Mainstream beliefs in one country may have endured persecution elsewhere. Moreover, religious ideas can fuel prejudice, creating a situation. Followers of a particular faith may also marginalize other faiths that show less preparation or endorsement of other ideas. Problems arise when people use their judgment and unfairly punish others based on their gender or sexual orientation. This argues for less attention to 'religion' when making decisions about how to treat individuals.<sup>2</sup>

In India, the Constitution seeks to establish a welfare state. Following the code makes this program more effective and reliable. Thus, the concept of the rule of law is particularly dynamic. It seeks not only to preserve and promote the civil and political rights of individuals but also to provide an environment in which people can realize their hope and due dignity. This includes social, economic, educational and cultural impacts.<sup>3</sup> Moreover, when there is social disparity or economic inequality, the democratic state intervenes, using the power of the law to promote social equality and redress economic injustice.<sup>4</sup> Accordingly, the main objectives of the Constitution are to guarantee equality of status and rights, to promote fraternity and respect for human dignity and also to promote national unity and loyalty. Since the framers of the Constitution may have included other provisions requiring state intervention and simply prohibiting discrimination based on religion, race, ethnicity, sex, or place of birth. This

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<sup>1</sup> Aarushi Gupta, 'A Critical Analysis of Protective Discrimination under Indian Constitution' [2020] SA 20, 1

<sup>2</sup> McColgan Aileen, 'Class Wars: Religion and (In)equality in the Workplace' [2009] ILJ 38

<sup>3</sup> Om Prakash Sharma, 'Equality and Protective Discrimination under the Constitution of India' [2010] IJL&JL 92

<sup>4</sup> HC Upadhyay, *Reservations for Schedule Caste & Schedule Tribes* (South Asia Books 1991) 4378/48

included all measures allowing admission reservations to educational postings and institutions to different governmental positions.<sup>5</sup>

The Indian constitutional approach to compensation for discrimination was based on the assumption that certain social groups are inherently unequal and susceptible to social prejudice, and require redress and compensation. It was argued that the assumption that that equality based solely on individual achievement is fundamentally flawed in racial societies. It seemed counterintuitive to acknowledge that it could sometimes be compatible with as many social ends as attempts at community equality completely contradictory.<sup>6</sup> Within India's complex socio-economic stratification, the drafters of the Constitution purposefully included the provision of 'protection of discrimination' to celebrate the valued ideals of freedom, equality, fraternity and justice role. Because of this, a range of social programs were started such as legislative actions, benefit systems and constitutional provisions.<sup>7</sup> The main goal of this effort was to reduce the gap between individuals from different socioeconomic backgrounds. Also called compensatory discrimination, affirmative action, positive discrimination, or 'protective discrimination'. Everyone is given equal access and uses many free services regardless of religious affiliation, race or color.<sup>8</sup>

### **Protective Discrimination**

Protective discrimination means providing special benefits to poor and marginalized members of society, with a focus on women empowerment. Also known as affirmative action, the program is particularly widespread in the United States and India, both of which have histories of racial and ethnic prejudice. Self-discrimination is widespread in India and constitutionally protected. The need for sound judgment in favor of the socially less fortunate was first recognized in the larger national movement. Mahatma Gandhi, a Hindu comrade and a strong supporter of the caste system, was at the forefront of recognizing the importance of this issue. It seeks not only to preserve and promote the civil and political rights of individuals but also to provide an environment in which people can realize their hope and due dignity. This includes aspects like social, economic, educational, and cultural factors. Gandhi aspired to broaden the scope of the national movement and was deeply distressed by the dire circumstances faced by

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<sup>5</sup> PP Rao, 'Equality And Protective Discrimination Under The Constitution Of India' [2000] JILI 42

<sup>6</sup> Pannanand Singh, 'Some Reflection on Indian Experience with Policy of Reservation' [1983] JTLJ 25

<sup>7</sup> KC Suri, 'Caste Reservations in India: Policy and Politics' [2014] TIJPS 55

<sup>8</sup> Sheikh Idrees Mujtaba, 'Indian Society and the Policy of Protective Discrimination: Issues of Identification and Welfare' [2017] IJRCS 1

marginalized communities. His vision encompassed the elimination of social barriers faced by lower caste individuals and the mobilization of their wholehearted participation in the country's liberation<sup>9</sup>

Affirmative action initiatives are prevalent in India, particularly enshrined within the Constitution and institutionalized. Aligned with the Constitutional framework, the commitment articulated in the Preamble to ensure equality of opportunity and status has been substantiated and given life through the provisions laid out in Articles 14, 15, and 16. These articles collectively form a framework addressing the objective of equality. Article 14 establishes the principle of equality in broad strokes, which is then elaborated and specified in Articles 15 and 16.<sup>10</sup>

### Historical Origin of Article 15

Dr. B.R. Ambedkar, who later assumed the role of the drafting committee's chairperson for the Indian Constitution, and himself a Dalit, once characterized the caste system as a form of "inequality graded." This system, delineated through intricate religious and societal mandates, encompassed economic ostracism, spatial isolation, and forceful coercion. Caste thus served as the pivotal point for the exclusion of individuals from fundamental social resources requisite for a dignified existence.<sup>11</sup> Centuries of operating under the caste system had consequently led to the construction of structural and institutional impediments to equitable participation and representation for numerous caste groups within India.<sup>12</sup> Hence, the caste system exemplified "structural inequality," wherein the regulations of a society's principal institutions consistently generate disproportionately adverse consequences for identifiable social groups, and the generation of such consequences is deemed unjust.<sup>13</sup>

In 1905, India witnessed its inaugural documented case of affirmative action: Within the princely state of Kolhapur, the monarch, Shahuji Maharaj, issued a decree allocating 50% of administrative positions to "backward castes."<sup>14</sup> The metric for assessing disadvantage

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<sup>9</sup> Maniram Sharma, 'Protective discrimination in India: Constitutional position, need and impacts' [2015] CASIRJ 6

<sup>10</sup> Rajinder Kumar Marwaha and Anuradha Chadha, 'Protective Discrimination and Women' [2013] IJL&J 4, 50

<sup>11</sup> John Henry Hutton, *Census of India* [1933] Manager of publications (vol 18)

<sup>12</sup> Galanter, *Competing Equalities: Law And The Backward Classes In India* (University of California Press 1984) 7-17

<sup>13</sup> Gautam Bhatia, 'Equality under the Indian Constitution' [2022] BiUPG 231

<sup>14</sup> Jayasingrao Pawar, *Rajarshi Shahu Chatrapatinche Jahirname va Hukumname* (Mehta Publishing House 2018)

(referred to as "backwardness," a term prevalent during the colonial era) was based on caste. Although there existed no standardized criteria defining "backwardness," primary indicators, as emphasized in census documents, encompassed social marginalization (such as ostracism, practices of "untouchability," etc.), spatial separation, restrictions on accessing public resources (such as pathways and water sources), and economic deprivation.<sup>15</sup> Within this context, the Constituent Assembly convened between 1947 and 1949 to craft the Indian Constitution. Assembly members were very clear that it's the state's duty to acknowledge and address the social divisions in Indian society, and they believe the Constitution is meant to help with this effort. These provisions formed what the Supreme Court later termed the "Equality Code": Articles 14 to 16 of the Indian Constitution. Article 14 mandated that the State could not deprive any individual of equality before the law or equal protection of laws within India.<sup>16</sup>

### Understanding Article 15

The Constitution of India, enacted on 26 January 1950, mandates against discrimination based on religion, race, caste, sex, place of birth, or language by the state concerning education and employment. Conversely, it acknowledges protective measures, termed as interim, favoring particular groups for the cause of social justice.<sup>17</sup> **In the Indian Constitution, Article 15 expressly forbids discrimination solely based on religion, race, caste, gender, or birthplace. Constitutionally, provisions addressing discrimination on religious grounds and those safeguarding freedom of religion are delineated separately.**

**Article 15 provides a comprehensive critique, prohibiting various forms of discrimination. It articulates that,**

The State must not discriminate against any citizen solely based on religion, race, caste, sex, place of birth, or any combination of these factors. Additionally, no citizen should face any disadvantage, restriction, or condition in accessing public facilities such as shops, restaurants, hotels, entertainment venues, wells, tanks, bathing areas, roads, and other public spaces maintained entirely or partially with State funds or designated for public use, solely because of their religion, race, caste, sex, place of birth, or any such factor.<sup>18</sup>

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<sup>15</sup> *Supra* note 13.

<sup>16</sup> Article 14, Constitution of India, 1949

<sup>17</sup> *Supra* note 3.

<sup>18</sup> Durga Das Basu, *Shorter Constitution of India* (AK Patnaik, 15th edn, LexiNexis 1976)

Upon a cursory examination of Articles 15(1) and (2), it becomes evident that there exists an unequivocal entitlement to protection against state discrimination based on religion. Moreover, there exists an unqualified entitlement to the same protection against non-state entities concerning access to establishments such as shops, public restaurants, hotels, wells, tanks, and so forth. Crucially, unlike Article 15(3), which authorizes the state to implement special measures in favor of women, or Article 15(4), which authorizes similar measures for the advancement of socially and educationally disadvantaged groups of citizens, there is no provision enabling comparable actions concerning religious communities.<sup>19</sup>

Article 15(3) stipulates that in certain spheres, women and children may require special privileges for their welfare, thereby permitting the state to enact laws to that effect. This provision does not imply discrimination but rather the provision of specific privileges deemed necessary for their well-being. Additionally, Article 15(4) was incorporated into the Indian Constitution following the first amendment in 1951.<sup>20</sup> Article 15(3) embodies the idea of protective discrimination. This concept, by its very nature, stands as an exception to the overarching principle of equality delineated in Article 14. However, the application of protective discrimination must not be permitted to undermine significantly the fundamental notion of equality.<sup>21</sup>

The Constitutional (103rd amendment) Act of 2019 ushered in a novel perspective. It stipulates that 10% of reservations based on economic criteria shall augment the general category. This augmentation occurs independently of reserved seats designated for disadvantaged groups, namely, the scheduled castes, scheduled tribes, and other backward classes. Put differently, this 10% reservation extends to individuals beyond those enumerated in Clause 4 of Article 15. Consequently, this exceeds the existing reservation quota, totaling 59.9%. This augmentation surpasses the precedent set by the Mandal Commission case, which prescribed a 50% upper limit. However, it incorporates an additional 10% quota, thereby altering the landscape.<sup>22</sup>

In the discourse concerning the expansion of reservation benefits within medical specialty and super-specialty courses, it becomes imperative to consider the observations laid forth by the

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<sup>19</sup> *Supra* note 14

<sup>20</sup> Anirudh gupta, Article 15 Of The Indian Constitution: An Insight (Legal Service India)  
<<https://www.legalserviceindia.com/legal/article-3493-article-15-of-the-indian-constitution-an-insight.html>>

<sup>21</sup> *Id.*

<sup>22</sup> Alqa Samreen, ‘Constitutional Validity of The Constitutional (103Rd Amendment) Act, 2019’: A Critical Study.’ [2019]

Supreme Court in the case of *Dr. Preeti Srivastava and Another against the State of Madhya Pradesh*.<sup>23</sup> The case pertained to the constitutionality of legislation enacted by the State of Uttar Pradesh and Madhya Pradesh concerning admissions to postgraduate medical programs. These laws established reduced minimum qualifying thresholds for seats designated for reserved categories. However, the court, in this instance, declared the fixation of 20% for reserved seats and forty-five percent for the general category as invalid due to the excessive and unjustifiable variance between the two percentages.<sup>24</sup> The Constitutional Bench noted that 'the purpose behind Article 15(4) aims to enhance the principle of equality by implementing selective favoritism towards disadvantaged groups, enabling their empowerment and fostering parity in competition with more privileged individuals. Addressing broader social problems is important in designing such focused interventions. At the same time, there are broader national needs to consider, such as promoting exceptional growth and providing the best infrastructure for the best individuals in the country and for the benefit of society. Consequently, special programs seek to strike a judicious balance between these national interests.'<sup>25</sup> The court noted that some clauses require special protections that may be consistent with the general interest of the state. Consequently, limits on advanced knowledge should not be extended, as the sacrifice of skills and knowledge may be detrimental to the public interest.<sup>26</sup>

Following the inauguration of the Constitution of India, a major case came related to it, known as the *State of Madras v. Champakam Dorairajan*.<sup>27</sup> The primary argument of this particular case focused on fighting a reservation policy personified in a Communal Gout Order (G.O.), which had been drafted in the former Madras State prior to the Constitution's enactment. This order specified the seats allocation in medical & engineering colleges among numerous social groups on the basis of specific ratios. In 1950, two Tamil Brahmins, Srinivasan and Champakam Dorairajan, petitioned individual in the Madras High Court, contesting this policy. They argued that their fundamental rights under Article 15(1) were infringed upon.<sup>28</sup>

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<sup>23</sup> *Preeti Srivastava and Another (ANR) v State of Madhya Pradesh and Ors* [1999] 7 SCC 120

<sup>24</sup> CS Dhanya and N Balu, 'A study on the landmark supreme court judgments in india relating to reservation in medical admissions' [2023] IDPR 22, 500-506

<sup>24</sup> *MR Balaji And Others v State Of Mysore* [1962] AIR 1963 (SC) 649

<sup>25</sup> Mukul Chandra Kapoor and Shubhendu Anand, 'Quota in specialty and super-specialty courses: What does the judiciary say?' [2017] TNMJI 30, 159-160

<sup>26</sup> *Id* 27.

<sup>27</sup> *State of Madras v Champakam Dorairajan* [1951] AIR1951 SC 226

<sup>28</sup> Anurag Bhaskar, 'Reservation as a fundamental right: Interpretation of article' [2023] IJCL 16, 10

## **EWS Quota, Class and Caste under article 15**

.The concept of reservations or affirmative action in India has historically been tied to social justice and the upliftment of socially and educationally backward classes, particularly those identified by caste. Article 15 of the Indian Constitution prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. It also allows the State to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes (SC) and Scheduled Tribes (ST).

The introduction of the Economically Weaker Sections (EWS) quota marks a significant shift in the understanding and application of reservations under Article 15. The EWS quota, introduced through the 103rd Constitutional Amendment in 2019, allows for up to 10% reservation in educational institutions and government jobs for individuals who are economically disadvantaged but do not belong to the SC, ST, or Other Backward Classes (OBC) categories.

### **Class vs. Caste in the Context of EWS Quota**

1. Shift from Caste-based to Class-based Affirmative Action: Traditionally, reservations in India have been based on caste, as caste has been a major determinant of social and educational backwardness. The EWS quota, however, focuses on economic criteria rather than caste, marking a move towards class-based affirmative action. This acknowledges that poverty and economic disadvantage exist across all communities, not just among the traditionally recognized backward classes.

2. Article 15 and Economic Criteria: Article 15(6) was added to the Constitution to provide for reservations based on economic criteria, enabling the State to make special provisions for economically weaker sections of society. This inclusion has sparked debates on whether reservations, which were originally intended to address historical and systemic social inequalities, should also encompass economic disadvantages that cut across caste lines.

3. Legal and Social Implications: The introduction of the EWS quota under Article 15(6) raises questions about the purpose and scope of reservations. While caste-based reservations aim to correct historical injustices and provide opportunities to communities systematically marginalized and oppressed, the EWS quota seeks to address economic inequality. This has



led to discussions about whether economic disadvantage can or should be equated with social backwardness, and how the two forms of affirmative action can coexist without undermining each other.<sup>29</sup>

4. Constitutional Debates: The EWS quota has been challenged on various grounds, including the argument that it violates the basic structure of the Constitution by altering the essence of reservation policy, which has traditionally been caste-based. Critics argue that by extending reservations to economically weaker sections of the forward castes, the amendment dilutes the focus on social justice for historically marginalized communities. On the other hand, proponents argue that it represents a necessary evolution of the reservation policy to include economic justice.

5. Implementation and Impact: The impact of the EWS quota on the broader reservation policy is still being assessed. There are concerns about whether this new form of reservation will disproportionately benefit certain communities, particularly the upper castes, who may now claim economic disadvantage to access the quota. Additionally, the EWS quota raises the question of whether economic criteria should be introduced in other reservation categories as well, potentially reshaping the entire landscape of affirmative action in India.

The EWS quota under Article 15 represents a significant development in India's reservation policy, reflecting a shift from caste-based to class-based affirmative action. While it aims to address economic inequalities, it also challenges the traditional understanding of reservations as a tool for social justice based on caste. The ongoing legal and social debates around the EWS quota highlight the complexities of balancing economic and social considerations in the pursuit of equality and justice in India.<sup>30</sup>

### **Protective Discrimination and Women**

In the preamble of the Indian Constitution, the Constitution of India enshrines provisions for gender equality within the Fundamental Rights, Fundamental Duties, and Directives Principles. Throughout the Constitution of India, provisions emphasizing equality between women and

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<sup>29</sup> *Supra* note 24.

<sup>30</sup> Deepanshu Mohan, (The Quint, 2022) <<https://www.thequint.com/opinion/sc-on-ews-how-10-govt-quota-recognises-class-struggle-but-leaves>>.

men can be discerned. Part III of the Indian Constitution ensures the Fundamental Rights of both genders.

- (a) Article 15 states that there shall be no discrimination on the ground of religion, race, sex or place of birth.
- (b) Article 15(3) empowers the State to make special provisions for women and children.

### **Right to Reservation as a Fundamental Right**

The reservation specified in Article 15 (4) and 16 (4) undeniably aligns with the segment III of the constitution, encompassing fundamental rights. Nonetheless, not every segment of part III necessarily bestows a fundamental right. Certain clauses within part III serve merely as definitions, while others delineate the impact of fundamental rights on current and forthcoming legislation. Additionally, some clauses pertain to the execution and application of fundamental rights, whereas others outline exceptions to these rights. This diversity of provisions raises uncertainty regarding whether Article 15(4) and 16(4) indeed grant fundamental rights.<sup>31</sup> The implications of acknowledging reservation as an inherent entitlement are significant. Transitioning from a policy stance to a recognized fundamental right alters the landscape, where each individual's pursuit to ensure the enforcement of such entitlement rests solely on judicial scrutiny. Article 15(4) [and 16(4)] don't bestow upon disadvantaged groups any inherent rights to such provisions. Instead, they constitute a deviation from the rights that others would typically assert, objecting to such provisions as infringements upon the fundamental rights outlined in Article 15, 16, and 29. It's evident that the government may constitutionally abstain from implementing any such preferences.<sup>32</sup>

### **Case Studies**

#### **M.R. Balaji vs The State of Mysore (1962)<sup>33</sup>**

The significance of the Balaji case stems from its impact on numerous reports from backward class commissions and the judicial perspective for years. Crucially, the ruling in the Balaji case

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<sup>31</sup> Mahendra Pratap Singh, 'Are Articles 15(4) and 16(4) Fundamental Rights?' [1994] SCCJ 3, 33

<sup>32</sup> *Supra* note 3.

<sup>33</sup> *MR Balaji And Others v State Of Mysore* [1962] AIR 1963 (SC) 649

introduced uncertainty regarding the reservation policy based on caste awareness and set the stage for a broader discussion on caste-oriented reservation extending over three decades.<sup>34</sup> In this ruling, the utilization of caste to evaluate the disadvantaged status of a community was rendered illegitimate by law. Imposing a cap of 50%, the Supreme Court's decision additionally sought to maintain reservation rates at levels deemed reasonable.<sup>35</sup>

To resolve the matter, the Court was tasked with delineating the extent of Article 15(4). The interpretation of said provision came under direct scrutiny before a Constitution Bench for the first instance.<sup>36</sup> Delivering a unified decision, Justice Gajendragadkar (previously the author of the majority ruling in Rangachari) asserted that given Article 15(4) was introduced in response to the Champakam Dorairajan case, "there is unquestionably a necessity to construe Article 15(4) as either a proviso or an exception to Articles 15 and 29(2)." Additionally, the Court determined that "it would be an error to presume that the establishment of the Commission (under Article 340) and the ensuing procedures were prerequisites for any action under Art. 15(4)." Emphasizing that "backwardness" under Article 15(4) should be "both social and educational," rather than solely one of these aspects. The Court underscored that "for the pursuit of social and economic justice, Article 15(4) empowers the formulation of special measures for the advancement of the communities therein mentioned, even if such measures may contravene the fundamental rights guaranteed under Article 15."<sup>37</sup>

## **R. Chitralekha vs State of Mysore<sup>38</sup>**

Careful application of economic indicators is essential, as illustrated by the case of R. Chitralekha and Another v. State of Mysore.<sup>39</sup> The decision challenged in Chitralekha, following the Supreme Court's ruling in Balaji, questioned the omission of caste in reservation considerations. The Court asserted that while caste remains pertinent in assessing backwardness, it does not bar authorities from identifying specific backwardness among

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<sup>34</sup> Maniram Sharma, 'Protective discrimination in India: Constitutional position, need and impacts' [2015] CASIRJ 6

<sup>35</sup> Shikhar Jain and Mridula Goel, 'The Volatile Journey of India's Reservation Policy through Legal Amendments & Inconsistencies' [2019] G&PP 9, 77-102

<sup>36</sup> Maanvender Singh and Ugen Bhutia, 'Judicial Discourse On Caste-Based Reservation In India From Balaji To Indra Sawhney' [2022] Lex Humana 14, 91-106

<sup>37</sup> Anurag Bhaskar, 'Reservation as a fundamental right: Interpretation of article 16 (4).' [2023] IJCL 10, 1

<sup>38</sup> *R Chitralekha and Another v State of Mysore* [1823] AIR 1964 SC 1823

<sup>39</sup> *Ibid.*

citizens without invoking caste references.<sup>40</sup>

The court upheld the validity of identifying backward classes on economic grounds, without infringing upon Article 15(4). However, the classification, ostensibly rooted in economic criteria, relied on broad assumptions. For instance, it generalized by considering individuals engaged in agricultural practices as economically disadvantaged. The government refrained from employing a rigorous, empirical formula, resulting in a conclusion that failed to effectively safeguard the economically vulnerable.<sup>41</sup> Hence, it's noteworthy that the Supreme Court (SC) affirmed a revised governmental directive delineating 'backwardness' based on criteria such as earnings, profession, and various economic aspects, devoid of any reference to caste.<sup>42</sup>

In both *Balaji* and *Chitralkha*, the Court refrained from considering caste as the sole determinant in assessing the social backwardness of a community. Nevertheless, the Supreme Court later revised its earlier rulings, acknowledging the presence of numerous castes in the nation that face social and educational challenges. It emphasized the State's responsibility to safeguard their interests. A caste, being a 'class' of citizens, may be deemed socially and educationally backward as a whole without violating Article 15(1). However, when determining backwardness beyond caste lines, other factors such as socio-economic and educational status should also be considered. Accordingly, the Court endorsed a Madras directive defining Backward Classes with consideration to both castes and additional factors. Upon reviewing the historical process of list formulation, the Court found assurance that caste wasn't the exclusive basis for backwardness; rather, the principal criterion for inclusion was the social and educational backwardness tied to occupations within these castes. Castes were merely a collective representation of socially and educationally disadvantaged groups.<sup>43</sup>

### **State of Uttar Pradesh vs Pradip Tandon (1974)<sup>44</sup>**

The legal matter concerned the constitutional soundness of quotas for entry into state medical colleges. The State Administration had enforced quotas for rural, hill, and Uttarakhand regions,

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<sup>40</sup> SW Ahmad and MA Ali, 'Social Justice and the Constitution of India' [2006] TIJPS 2006, 767-782

<sup>41</sup> Nirupama Pillai, 'Who Are the Other Backward Classes' [2007] SBR 19, 31

<sup>42</sup> Aditya Mehta, 'Casteism Much? – An Analysis of *Indra Sawhney*' (Cyril Amarchand Mangaldas, November 27, 2017) <<https://corporate.cyrilamarchandblogs.com/2017/11/casteism-much-analysis-indra-sawhney-part/>>

<sup>43</sup> *Rajendran vs State Of Madras* [1968] AIR 1968 SC 1012

<sup>44</sup> *Uttar Pradesh v Pradip Tandon* [1974] AIR 1975 SC 563

contending that individuals from these locales comprised socially and educationally disadvantaged groups. Initially, the High Court invalidated these quotas in one instance, overlooking a prior ruling. On appeal to the Supreme Court, the State posited that the intent of the categorization was to promote medical education for candidates from designated areas and furnish them with its advantages. It maintained that the quotas were premised on residency rather than birthplace, hence not falling within the ambit of discrimination proscribed by Articles 15(1) and 29(2) of the Indian Constitution. The Supreme Court decreed that quotas favoring rural candidates were unconstitutional. Nonetheless, it deemed quotas for hill and Uttarakhand regions separable and lawful. The Court clarified that the Constitution doesn't empower the inclusion of socially and educationally backward regions under Article 15(4)'s protection. It stressed that backwardness under Article 15(4) encompasses both social and educational aspects, precluding caste, race, or religion as determinants of such backwardness. The verdict underscored the significance of considering factors like economic deprivation and educational infrastructure scarcity in defining backward classes. The Court dismissed the notion that rural poverty alone could warrant quotas, asserting that poverty transcends geographical boundaries in India and thus can't form the basis of classification. It concluded that favoring rural regions constituted unconstitutional bias against general category students, emphasizing that quotas shouldn't hinge on birthplace. The ruling distinguished this case from prior ones, establishing a precedent concerning the constitutional validity of educational institution quotas predicated on social and educational disadvantage.<sup>45</sup>

### **Indra Sawhney vs Union of India (1993)**

In the case of *Indra Sawhney v. Union of India*,<sup>46</sup> the court determined that the issue revolves around not merely the permissibility or desirability of implementing a means test, but rather the accurate and suitable delineation of a group - specifically, the backward class.<sup>47</sup> According to the stipulation, reservation for backward classes ought to exclude the creamy layer. The *Indra Sawhney-I* case specified this exclusion solely for OBCs. Consequently, there is no mention regarding the application of creamy layer exclusion to Scheduled Castes and Scheduled Tribes.<sup>48</sup> The court ruled that the creamy layer test (also referred to as the 'means test') must be

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<sup>45</sup> *Supra* note 53.

<sup>46</sup> *Ibid.*

<sup>47</sup> Arpita Sarkar, 'Jarnail Singh and Others v Lachhmi Narain Gupta and Others' [2019] *Verfassung und Recht in Übersee/Law and Politics in Africa, Asia and Latin America* 52, 383-395

<sup>48</sup> Suyash Verma, 'Important Cases in Service Law-My Comments' [2012] SSRN 2019806

utilized to omit economically and educationally advantaged individuals from the Backward Classes for reservation purposes. Under this assessment, individuals from backward classes (SEBCs and OBCs) who surpass the economic threshold established by the relevant government at different intervals, moving into a more affluent economic category, form the creamy layer of the backward classes. Consequently, they lose entitlement to reservation as guaranteed under Articles 15 and 16 of the constitution.<sup>49</sup>

The stance upheld by the Supreme Court in the case of Indira Sawhney still endures and persists; consequently, no provision can be instituted for reservation in promotional positions for the OBCs. Subsequently, an Amendment proposed that any unfilled restricted opportunities in a given year must be forwarded to subsequent years; these vacancies should be treated as distinct and separate from those available during each respective year. The principle of 50% reservation established by the Supreme Court applies solely to regular vacancies, not to the backlog of reserved vacancies. Hence, unfilled reserved vacancies are to be carried forward indefinitely from previous years and filled separately from regular vacancies. This Amendment altered the precedent set by the Supreme Court in Indira Sawhney, thereby augmenting employment prospects for SC, ST, and OBC candidates.<sup>50</sup>

### **PA Inamdar vs State of Maharashtra<sup>51</sup>**

The matters discussed in the Islamic Academy Case were deferred to a larger panel of seven Justices in the Supreme Court during the proceedings of PA Inamdar Vs. State of Maharashtra<sup>52</sup>. Chief Justice Lahoti, in a unanimous declaration, emphasized that Article 30 (1) aimed solely to inspire minority confidence, guarding against executive or legislative intrusion upon their rights to establish and administer educational institutions as they see fit. The court, in reaffirming the principle of equal rights, also ruled out state-mandated quotas for both aided and unaided minority and non-minority educational institutions. To counter this decision in the PA Inamdar case, Parliament passed the Constitution (Ninety-third) Amendment Act 2005, introducing Article 15 (5) to allow the state to reserve seats for Backward Classes, Scheduled Castes, and Scheduled Tribes in both government and private unaided educational institutions. Notably, minority educational institutions were excluded

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<sup>49</sup> *Supra* note 59.

<sup>50</sup> Isha Agrawal and Aishwarya Singh, 'Article 16 of the Indian Constitution: Overcoming Past Discriminations' [2016] SSRN 2721686

<sup>51</sup> *PA Inamdar v State of Maharashtra* [2005] 6 SCC 537

<sup>52</sup> *Ibid.*

from this amendment's scope, reaffirming their special status despite being subject to admissions reservations.<sup>53</sup>

### **Critiques and Debates regarding Article 15 and protective discrimination**

Protective discrimination is a topic extensively addressed within the Indian constitution, with provisions scattered throughout its text. However, there exists an ongoing discourse questioning the inherent nature of this concept: does it harbor beneficial outcomes or detrimental effects? Moreover, its relevance in modern times is continually scrutinized. Originally conceived to protect marginalized groups, its application has deviated, serving personal interests rather than its intended purpose.<sup>54</sup> Numerous scholars, activists in social spheres, sociologists, economists, and anthropologists have engaged in debates regarding the necessity of reservation policies. Opinions both in support and opposition are voiced. Upon scrutinizing the arguments favoring affirmative action, including reservations, discussions have delved into topics such as historical injustices spanning centuries, disparities in household environments, and access to social welfare mechanisms. The growing scarcity of employment opportunities underscores the heightened need for reservation policies to aid marginalized segments of society. Significant advancements in socio-economic status (SES) have been observed, particularly among those benefiting from reservation provisions. Economic disadvantage poses a formidable barrier to the educational and political advancement of underprivileged groups. Contrary to this perspective, Satish Deshpande criticizes the reservation system's efficacy in fulfilling its intended objectives. In his article, 'Caste and Classlessness,' he posits that the pursuit of equality, as envisioned by principles of equality and non-discrimination, originally aimed at combating caste-based hierarchies on a national scale. However, the persistence of caste-based reservations impedes this goal, representing an insurmountable divide. According to Deshpande, this situation renders the aspiration for the "annihilation of caste" more akin to an unattainable ideal than an empowering reality.<sup>55</sup>

Over time, the deficiencies of the reasonable classification have become increasingly evident to the Court. An illustration of this phenomenon arose in the legal challenges to Section 377 of the Indian Penal Code, which proscribed relationships between individuals of the same gender.

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<sup>53</sup> Rakesh Chandra, 'Educational rights of minorities: A constitutional conundrum' [2017] IJL 3

<sup>54</sup> *Supra* note 1

<sup>55</sup> *Supra* note 8.

An argument raised against nullifying the provision was that Article 15 does not expressly include sexual orientation among the prohibited grounds of discrimination.<sup>56</sup>

Article 15, in its essence, prohibits discrimination based on sex, religion, caste, and place of birth. Similarly, Article 16 prohibits discrimination on grounds of race, religion, sex, descent, place of birth, and residence. In numerous instances where classifications are made concerning these criteria, such classifications are deemed discriminatory and rendered void, even without the application of a comprehensive discriminatory test (as evidenced in the case of *Charu Khurana v. Union of India*,<sup>57</sup> where the Court, solely addressing a violation of Article 14, notably omitted reference to Article 15 regarding gender discrimination).

The Court, on occasion, deems discriminatory provisions contrary to both Article 14 and 15. Hence, in instances of overt discrimination prohibited by the Constitution, the Court hasn't extensively deliberated on the review standard. In certain scenarios, the Court explicitly places the onus on the State to rationalize the classification and has determined that the State failed to substantiate the classification with supporting evidence.<sup>58</sup>

In the *Pramati Educational and Cultural Trust Case*<sup>59</sup>, a bench of five judges deliberated on the constitutionality of Articles 15(5) and 21A of the Constitution. The bench grappled with two pivotal legal questions: Firstly, whether Parliament, through the Constitution (Ninety-third Amendment) Act, 2005, modified the fundamental structure or framework of the Constitution by introducing Clause (5) into Article 15? Secondly, whether Parliament, through the Constitution (Eighty-sixth Amendment) Act, 2002, altered the fundamental structure or framework of the Constitution by adding Article 21A? The court, in its ruling, upheld the constitutional validity and provided exemption to minority-administered institutions from the entirety of the Right of Children to Free and Compulsory Education Act, 2009. In the *Pramati* case, the issue of whether Article 15(5) disrupted the balance between Part III and Part IV of the Constitution was raised but remained unaddressed by the judges, left unanswered.<sup>60</sup>

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<sup>56</sup> Jahnavi Sindhu and Vikram Aditya Narayan, 'Equality under the Indian Constitution: Moving away from Reasonable Classification' [2022] SSRN 4288394

<sup>57</sup> *Charu Khurana v Union of India* [2015] 1 SCC 192

<sup>58</sup> *Id* 68.

<sup>59</sup> *Pramati Educational and Cultural Trust (Registered) v Union of India* [2014] 8 SCC 1

<sup>60</sup> Aqa Raza, 'The Doctrine of 'Basic Structure' of the Indian Constitution: A Critique' [2015] SSRN 2661127



## **Conclusion**

Colonial India had become accustomed to employing quota systems for over five decades. These systems served as affirmative action measures, aimed at addressing structural disadvantage and promoting equitable representation. However, within the new Constitution, although provisions for quotas were made for disadvantaged "classes," discrimination based on caste and religion, even within the realm of public employment, was explicitly prohibited. The intention behind implementing reservation in India aimed at enhancing the circumstances of economically and socially disadvantaged groups. However, in delineating the eligible categories for reservation, caste has consistently taken precedence over income or wealth. This has resulted in advantaged individuals benefiting from the policy, while those genuinely experiencing hardship find themselves without support.

In the process of crafting the Indian Constitution amidst the era of Independence, it became evident that the document would extend beyond the conventional and well-known "equal protection clause" found in numerous other Constitutions. The fight for Independence in India encompassed not solely a political battle against colonial dominance but also a societal struggle against disparities and hierarchies within the populace and social structure, touching upon caste, gender, and various other dimensions.

During the formulation of the protective discrimination policy, individuals endured the harshness of caste-based discrimination. However, in the intervening years, efforts have mitigated the caste issue. Within the constitution, clauses safeguarding against discrimination and ensuring equal opportunities are positioned alongside protective clauses. The constitution appears to regard it as a policy matter. Policy delineates a shared objective pursued by a community, while rights entail individual entitlements safeguarding personal interests. Rights serve chiefly as protective measures, ensuring citizens specific fundamental liberties and shielding them against undue influence, discrimination, and arbitrary state actions. In a certain light, Article 15 might be construed as sanctioning standards akin to those espoused by Kelsery, thus legitimizing the infringement upon the rights of individuals belonging to marginalized communities. It is contended that the concept of equality, when viewed through the lens of policy, must be discerned separately from equality as a matter of rights.