
CONSTITUTIONAL PROVISIONS FOR RESERVATION (ARTICLE 15 & 16): JUDICIAL TRENDS, CREAMY LAYER PRINCIPLE, AND THE SUB-CATEGORIZATION DEBATE

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ABSTRACT

Reservation is an instrument to establish true sense of equality i.e. substantial equality; it aims to minimize the evils social and deliver social justice historical disadvantaged section of the society by providing them opportunity in public education and employment. The Author has analyzed the reservation provisions enshrined under the Constitution, particularly involving Article 14,15,16 tracing its development from the principle of equality under Article 14 to the specific constitutional provisions enabling affirmative action. The article follows the evolution of judicial precedents pertaining to creamy layer principle, sub categorization of the Other backward classes and scheduled caste and scheduled tribes respectively.

Keywords: Article 15 &16, Creamy layer, Sub categorization, Constitution Judicial Precedents.

Introduction

The concept of Reservation is based on providing preferential treatment and opportunities to the weaker section of the society to uplift their livelihood and the holistic conditions for a respectable life. The core duty lies with the state to ensure as it is obligated to provide appropriate conditions and aid to the weaker section of Indian Society.

The Constitution framers realized it at the very inception of the independence, that India is country with diverse socio-cultural backgrounds and every individual cannot be treated equally in the field of education and employment. Reservation is an opportunity to ensure that underprivileged and victims of social evil are given fair opportunity. It is based upon the principle of equity, and also on the notion that unequal's cannot be treated equally. Article 14 of the Constitution outlines the principle of equality and to assess validity of the appropriate test to determine the validity of the differential treatment. In a society where social evils pertaining to untouchability, caste-based discrimination, are present the reservation policies ensure the representation of victimized section into public educational institutions and employment. Vision of the constitutional framers was to provide, secure and aid the scheduled castes, tribes and other socially backward classes. To socially uplift the situation Reservation must be given paramount importance for the welfare of the marginalized section and the social development of the country.

Historical Background

During the British era, the reservation was rarely given in the field of public employment or ¹ educational institutions except by provincial governments. One of the early constitutional developments concerning political representation was introduction of separate election for Muslims under Morley-Minto reforms in 1909 and was extended to Sikhs Indian Christians, Anglo-Indians and Europeans by the Government of India Act 1919. Madras presidency reserved certain governmental posts for non-brahmins, Muslims and Anglo-Indian and the depressed class. In 1932, seventy-one separate electorate were reserved for Dalits under communal Award to which Mr. Gandhi resisted as it would divide the society and it would strengthen the position of the British rule went on a fast. Dr. B.R Ambedkar strongly supported for a separate electorate for Dalits and reasoned that it would ensure political independence,

¹ <https://polsci.institute/india-political-process/evolution-reservation-policies-scs-sts-india/>

prevented the dominance of the upper caste. Amidst the tensions and protest Poona Pact was signed after negotiations where the separate electorate for Dalits were abolished and joint electorates were introduced. The Pact increased the reserved seats from 71 to 148. Further it endured the representation in central legislature involving the demand of cast-based electorates in the central provincial legislature for the representation of the Dalits.

Equality before law- and Equal protection of law (Article 14)

The principle of equality is pervasive across the democratic countries; it is one of the foundational pillars of Rule of law. Equality as a principle did not emerge at a single point in history whereas it evolved through the pace of time. The idea of Justice and equality are interlinked constitutionally and morally. Equality has been conceptualized into multiple facets of equality- formal, moral, proportional and presumption.² These facets are based on Aristotelian view of equality involving the most highlighted concept **“Equals should be treated equally, unequal’s may be treated differently in proportion to their relevant differences”**. The framers of the constitution adopted a substantive conception of equality rather than the formal one of equality to do away with the caste-based discrimination and eliminate the inequalities by guaranteeing a legally validated protective treatment to the marginalized section/ socially or economically backward communities for social upliftment. The citizens envisaged a view enumerated with equality to attain in terms of equal status and opportunity.³ Article 14 of the Constitution provides that state shall treat everyone equally and must provide equal protection of law. It protects the persons in a discriminatory environment unless a rational or reasonable classification is present. To achieve the fruits of substantive equality, the framers stressed and adopted the English doctrine of Rule of Law and United States idea of equal protection of law⁴. Equality before law is a negative concept and equal protection of law is a positive concept. These principles cannot be applied in an absolute manner as it would undermine the idea of equity and social justice.⁵ In the landmark judgment of the *M Nagraj v. Union of India*, the court stated the distinction between non-discriminatory principle and affirmative action. Though both the principles seek to establish equality of opportunity but are different, affirmative action aims to correct the past wrongs and move

² Equality- <https://plato.stanford.edu/entries/equality/>

³ Preamble of the Constitution

⁴ United states 14th Constitutional amendment- <https://constitution.congress.gov/constitution/amendment14/>

⁵ *State of U.P. v. Deoman Upadhyaya*, 1960 SCC Online SC 8 ⁶ MP Jain 8th Edition on Constitution of India 907

beyond the concept of non-discrimination to establish substantive equality whereas the nondiscrimination principle restricts the State from discriminating the citizens on the grounds mentioned under Article 15. Affirmative action is a positive concept as the State for the welfare of the marginalized section frame welfare laws to prove a level playing field. For instance, the reservation of seats in public employment and educational institutions. The Constitution empowers the State to adopt the affirmative action as it aids in establishing substantive equality which is necessary for a welfare state. Article 14 forbids class legislation but allows it if there are intelligible differentia and reasonable nexus. The Judiciary has adopted the test involving reasonable classification and arbitrariness to assess the validity pertaining to State's actions. It is undoubted and also declared by the Supreme Court that Article 14 is a basic feature of the Constitution. Article 14 and 15 are read together in the light of preamble to prevent discrimination on the basis sex, caste, creed, place of birth in the matter of equal treatment, status and employment.⁶

Article 15 Constitutional Guarantee Against Discrimination

The provision aims to put an end to the social evils pertaining to caste-based and other forms of discrimination which were prevalent in the society. The constitution seeks to provide the citizens of the country a constitution which completes the aspirations of a harmonious and equal society. These tenets of anti-discrimination correspond with Article 2 of the Universal Declaration of Human Rights. Article 2 of the UDHR states that everyone is equal and entitled to freedom with no distinction on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 15 altogether was added by the framers of the Constitution to endow an obligation upon state that no person is discriminated on the grounds of religion, race, caste, sex, place of birth or any of them. The grounds are limited by the framers and are kept restrictive by adding the term "only". The discrimination shall not be exercised by the State or its instrumentalities in public places involving access to shops, public restaurants, hotels and places of public entertainment. Further no person shall be restricted to use the 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.⁵ The clause (1) and (2) are kept very wide by the framers of the constitution for the reasons that to counter the exclusiveness of the public places to certain

⁵ Article 15(2) of the Constitution of India

section of the society on the basis of superiority of caste, creed. K.T. Shah in the Constituent Assembly debated that and sought to expand the meaning of the provision. He stated

“In the past very distressing experience of, let us say, wells not being allowed to be used by members of a particular class, or canals not being allowed to be used except on certain occasions or under certain conditions, and still more so, schools, hospitals and other places of this kind which are of very urgent public necessity, I think it would be not acting up to the ideals of this Constitution If there is not perfect and real equality amongst the citizens of this country.”⁶

Provisions enabling for Affirmative actions

Article 15 (3) enables the State to make special provision or laws for the welfare of women and children. This provision aids to strengthen vision of the framers to promote the principle of substantial equality. Any section of the society which is backward must need the support and special treatment from the State to improve the condition and the status. Such special treatment generally includes the field of education and public employment. Providing special treatment to a section which is backward does not compromise the principle of equality. Thus, genuine development of the society requires a constitutional framework in which equality and equity go hand in hand to ensure opportunity and upliftment. Since the inception of the Constitution, legislature has enacted certain legislation including- Maternity benefits Act 1962, Prevention of child from Sexual offences Act 2012, Juvenile Justice Act 2015, Dowry prohibition Act 1961. Such legislative measures demonstrate the legislatures commitment to implement the constitutional aspirations for the welfare and social upliftment of women and children.

Article 15(4) was added through First Constitution Amendment in 1951 facilitate the socially and economic backward class, the clause (4) states that nothing in this article shall prevent from making special provisions for the advancement of socially and educationally backward classes or Schedule caste and Schedule Tribes. The case of *State of Madras v. Champakam Dorairajan and Ors.*⁷ 1951 is considered to be landmark judgment as it led to first amendment in the Constitution. The State of Madras issued a communal G.O reserving seats in medical

⁶ Constituent Assembly debate on draft Article 9 <https://www.constitutionofindia.net/debates/29-nov-1948/>

⁷ State of Madras v. Champakam Dorairajan and Ors AIR1951SC226

⁸ Balaji v. State of Mysore MANU/SC/0080/1962

and engineering colleges based on caste, race and religion by referring to Article 46 of the constitution. The legal issue involved was whether the State could implement reservation policy for backward classes in education by simply following Directive principles of state policy. The State placed its arguments on Article 16(4) and 46, to justify the reservation in the educational institutions. The Supreme Court struck down the Governmental order on the basis of difference between educational and employment reservation. Article 16(4) permitted the reservation for the backward classes in the field of employment and not in area of educational institutions. In furtherance the court stated:

“Intention of the framers was not to introduce at all communal considerations in matters of admission into any educational institution maintained by the State or receiving aid out of State funds.”

Such order was in contravention to the tenets of the Constitution and constituted clear violation of fundamental rights ensured under Article 29(2).

The legislature in response to the Champakam Dorairajan made the first amendment to the constitution to Article 15 involving special provisions for SC, ST and socially and economically backward classes under (4) of the Article. In the case of *Balaji v. State of Mysore*⁸, the government reserved the seats up to 68 percent. Hon'ble Supreme Court struck down such order and stated special provisions should be less than 50 per cent and emphasized on the adoption of a reasonable formula which shall balance the situation.

Development of Article 15(5)

The Constitutional framework of affirmative action was further carried forward through Article 15 (5). It addresses the reservation for SC/ST and socially- economically backward classes in public and private unaided educational institutions. The insertion of the clause (5) of the provision must be understood against the Apex court's evolving jurisprudence in the backdrop of private educational institutions.

In the case of *T. M.A Pai Foundation v. State of Karnataka*⁸ Unnikrishnan scheme was challenged. The scheme involved regulation of appointment of staff, fixation of fees, etc. The minority institution contended that conditions attached to the grant of aid diminished the

⁸ T.M.A. Pai Foundation and Ors. Vs. State of Karnataka and Ors. 2002 8 SCC 481

minority character of the institution. Further, Article 29(2) shall not be interpreted in a way that it undermines or extinguishes the autonomy and special constitutional protections guaranteed to minority institutions. The Hon'ble Apex Court held the Unnikrishnan scheme to be unconstitutional on the basis that its rigid fee and seat allocation formula was found to destroy institutional autonomy. The judgement was ruled in favour of the private educational institutions as they were granted the substantial autonomy to appoint staff, setting reasonable fees merit provided they remain transparent, merit based and avoid profiteering.

In the case of *Islamic academy of education v. State of Karnataka*⁹ and *P.A. Inamdar v. State of Maharashtra*¹³ the position of private unaided educational institutions regarding its fees structure and the State's power to impose reservation in private educational institutions was clarified respectively the further ratio of T.M.A PAI foundation case was referred.

The 93rd Amendment was introduced by the legislature to promote education and social equality. It was brought to implement Article 46 (Directive Principles of State Policy) which directed the State to promote educational interest of the weaker sections of society. The Amendment inserted clause (5) to the Article 15 where both private and public aided-unaided educational institutions were covered for reservation. Educational institution established by religious and linguistic minorities were exempted from reservation. This protected the minority character of such institutions. The Amendment was challenged in the case of *Ashok Kumar thakur v. Union of India*¹⁰, Hon'ble Supreme Court upheld the Constitutional validity of the

Amendment as it promoted substantial equality under affirmative action for backward classes. Article 15(6) was added by the 103rd Constitutional Amendment for the welfare and advancement of economically weaker section other than classes mentioned under clause 4 and 5. The State is obligated to make special provision for EWS category in public/ private aided or unaided educational institutions. The legislature has reserved the allocation of seats up to 10 percent out of total 50 percentage of reserved seats. The said Amendment was challenged in the case of *Janhit Abhiyan v. Union of India*¹¹. On the grounds of violation of Article 14, basic structure and reservation on the basis of economic criteria; which is against the ratio of *Indra Sawhney* Judgemnt. Hon'ble Supreme Court upheld the Amendment with 3:2 majority,

⁹ *Islamic academy of education v. State of Karnataka* 2992(6) SCC 697 ¹³
Inamdar v. State of Maharashtra: AIR 2003 SC 355,

¹⁰ *Ashoka Kumar Thakur v. Union of India* (2008) 6 SCC 1 138

¹¹ *Janhit Abhiyan v. Union of India* (2023)5SCC1

by stating that it does not violate basis structure and form a separate class “Treating unequal’s as equals would as well offend the doctrine of equality enshrined in Articles 14 and 16 of the Constitution.”

Article 16: Equality of opportunity in matters of public employment

The true form of equality is achieved when an equal status and opportunity is provided, likewise the constitution undertakes the responsibility to provide the means to achieve substantial equality in the form of Article 16(1) by providing equality of opportunity in the matters of employment. The expression “matters relating to public employment not only limits it to initial appointment but also extends to the duration of office.”¹² Article 16 (2) is a negative aspect of equality of opportunity in public employment as it states the grounds on the basis of which no citizen shall be discriminated or declared ineligible in respect of any employment under State. Article 16 (3) is nothing but an exception to the idea of equality of opportunity in public employment, which enables, especially, the Parliament and not the State legislature to make a law prescribing residence within a State or Union territory.

Article 16(4) enables the parliament to make provision for reservation concerning appointment for the welfare and advancement of backward class. This provision does not confer a constitutional duty upon the parliament to make provision, whereas State is provided with discretionary power to make such provisions. Reservation needs to be legitimate and within the boundaries of reasonability. It is to be noted that Backward class mentioned in the provision does not necessarily mean backward caste or community.

Creamy layer principle: Indra Sawhney v. Union of India¹³

The case arose from the recommendations made by the Mandal commission in 1992. It involved reservation of 27 per cent for other backward classes and an additional 10 per cent for socially backward classes. The nine-judge bench presided over the case to decide issues involving the definition of Backward class under Article 16 (4) and validity of economic criteria for determination of identification. Also, whether the backward classes can further be

¹² General Manager, S Railway v. Rangachari AIR 1962 SC 36, *SUPRA* Footnote no. 6 P.g 1003

¹³ Indra Sawhney v. Union of India (1993) AIR477

sub-divided.

The Hon'ble Apec introduced the concept of creamy layer to ensure reservation reaches only to the legitimate ones. The court reasoned that social backwardness is the connecting thread of the backward class. Where the members of the class become socially-economically advanced such members shall be excluded from the benefits of the reservation as they become misfit.

“In a backward class under Clause (4) of Article 16, if the connecting link is the social backwardness, it should broadly be the same in a given class. If some of the members are far too advanced socially (which in the context, necessarily means economically and, may also mean educationally) the connecting thread between them and the remaining class snaps.

They would be misfits in the class.”

The Court stated that Article 16(4) aims at group backwardness and not individual backwardness, and exclusion of socially advanced members will make the 'class a truly backward class and would more appropriately serve the purpose and object of Clause (4). To identify the socially advanced members the means test was adopted which involved not only the economic criteria but also social advancement. The Court directed the central government to specify the criteria under the means test for exclusion. Following the judgment an office memorandum was issued it excluded the Children of persons holding constitutional post, children of senior governmental officials and children of officers in the Armed forces and parliamentary forces above a certain rank.¹⁴

Sub-categorization Debate

Some reserved classes are not uniformly backward internally; within the Scheduled Castes, Scheduled Tribes and Other Backward Classes, certain sections may have attained greater social and economic advancement than others. Post the Indra Sawhney judgement, the socially advanced members are excluded under the creamy layer. This raises a question regarding substantial equality within reserved category.

The constitutional debate over sub categorization of scheduled caste began with the case of

¹⁴ Office memorandum of 1993 <https://documents.doptcirculars.nic.in/D2/D02adm/OM%208-91993KmHkV.pdf>

*E.V. Chinnaiah v. State of Andhra Pradesh.*¹⁵ The state of Andhra Pradesh appointed a commission to identify the groups of schedule caste and tribes who failed to secure the benefits of reservation in public educational institutional and state services. On the basis of the report, the state enacted an Act, which divided 57 castes as per the presidential list for the State in four categories. The reserved 15 per cent quota for scheduled caste was divided in to these four categories. The Act was challenged on the grounds that (a) it violated Article 341 and questioned the State on the basis of locus standi and legislative competence. (b) The creation and sub classification of scheduled caste violated the Article 14. Hon'ble supreme court applied the doctrine of pith and substance and held that the court decided that state legislature does not have the legislative competence. Further the true intent of the Act is only to divide the caste mentioned under the presidential list and then divide 15 percent of reservation. The sub classification which was created for backward classes and in the case of Indra Sawhney was not considered for scheduled caste and tribes.

The Ev. Chinniah Judgment was overruled by the case of State of Punjab v. Dalvinder Singh¹⁶ involving the majority decision of 6:1. Hon'ble Supreme court placed its reliance on Article 14 and stated that the provision ensures factual and not merely formal equality. Sub classification is a facet of equality intended dot reach the more backward among a class. The court further added that in order for a state to carve out sub-categorization, there must be clear intelligible differentia along with reasonable nexus. It must be backed by quantifiable and demonstrable data and such actions are open to judicial review.

Conclusion

The Indian reservation system is fundamentally rooted in the principle of substantive equality, moving beyond mere formal equality to ensure that "unequals cannot be treated equally". This framework acknowledges that India's diverse socio-cultural landscape requires the State to provide preferential treatment and fair opportunities to marginalized sections, particularly in the fields of education and public employment. Article 15 prohibits discrimination on grounds such as caste and religion while simultaneously empowering the State to make special provisions for the advancement of socially and educationally backward classes, Scheduled Castes (SC), and Scheduled Tribes (ST). The evolution of these provisions has often been

¹⁵ E.V. Chinnaiah v. State of Andhra Pradesh: AIR2005SC162

¹⁶ State of Punjab v. Dalvinder Singh 2024 INSC 562

shaped by judicial intervention. the First Amendment allowed for reservations in educational institutions under Article 15(4). Subsequent amendments, such as the 103rd Amendment, have further expanded this reach to include Economically Weaker Sections (EWS), a move upheld by the Supreme Court as consistent with the Constitution's basic structure.

To ensure that the benefits of reservation are distributed equitably, the judiciary introduced the Creamy Layer principle, which excludes socially and economically advanced members of a backward class to prevent them from overshadowing the truly marginalised. Furthermore, the legal landscape is shifting toward recognizing internal inequities within reserved categories through the concept of sub-categorization. The judicial trend underscores that affirmative action must be a dynamic, data-driven process aimed at correcting past wrongs and establishing a level playing field for all citizens,