

Regards- **Prof. Mohd. Ahmad,**

Professor of Law, Faculty of Law, Lucknow University.

Mob- 94158336113

[Email-mohdahmad052@gmail.com](mailto:Email-mohdahmad052@gmail.com)

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The fundamental rights are those rights, which are vital for the development of human being. No one can attain the perfection of his life as a human being in their absence. That's why there is a long and tedious history behind these rights and India is not an exception. It is evident from human history that all over the world mankind has to wage incessant long war against the existing regimes to get these rights. These rights have come into existence in their present form with the emergence of democracy. The Indian masses had also lot of humiliation and suffering during the colonial period. Their situation was no better than vassals. The layman was ruthlessly exploited and was deprived of even the basic civil by the despotic colonial rulers in the country. That's why the Indian leadership during freedom struggle acknowledged the grievances of Indians and realized the need of rights for the masses to attain their fullest development as human being. Moreover, there wide spread disparities prevailing in Indian society at that time and the leadership deemed to provide such rights to the citizens in Indian Constitution as a panacea to eliminate glaring diversities. In addition to it, such rights have been guaranteed to their citizens number of other countries at that time under the impact of Universal Declaration of Human Rights (1948) by the UNO. Therefore, there was a prolong demand of Indians for these rights and the Constituent Assembly had to incorporate these rights in the new constitution. Keeping in view the gravity of the matter, a Committee on Fundamental Rights headed by Sardar Patel was made to enumerate these rights for Indian citizens. The Committee, making hectic efforts emerged with a draft of these rights which after approval from the Constituent Assembly were incorporated in Indian Constitution in Part III.

#### **“ Right to Equality ”ARTICLE 14, 15 &16**

This right varies from Article 14 to 18 and comprises of rights which eradicates discrimination and make attempt to establish equality.

**Article 14** is concerned with equality before law and equal protection of law i.e. the state will not deny to any person equality before law irrespective of ones socio- economic and political status and will provide equal protection of law to all in the territory of India.

#### **What is the difference between equality before law and equal protection of law?**

Article 14 declares that "The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India". There are two concepts involved in article 14 viz., equality before law 'and equal protection of laws'. The first is a negative concept which ensures that there is no special privilege in favour of any one, that all are equally subject to the ordinary law of the land and no person whatever be his rank or condition is

above the law. This is equivalent to the second corollary of the A.V. Dicey's concept of the Rule of Law in Britain. This principle is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. Every person, whatever be his rank or position, is subject to the jurisdiction of the ordinary courts. Prof. Dicey said, "with us every official, from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without any legal justification as any other citizen". The second concept 'equal protection of laws' is positive in content. It does not mean that identically the same law should apply to all persons, or that every law must have a universal application within the country irrespective of differences of circumstances. Equal protection of the laws does not postulate equal treatment of all persons without distinction. It denotes equality of treatment in equal circumstances. It implies that among equals the law should be equal and equally administered, that the like should be treated alike without distinction of race, religion, wealth, social status or political influence. This concept is rather a corollary of the first expression and directs that equal protection shall be secured to all persons within the territorial jurisdiction of the union in the enjoyment of their rights and privileges without favouritism or discrimination. It has been said that 'equal protection of the laws' is a pledge of protection or guarantee of equal laws. *Chiranjit Lal Chowdhary v. Union of India*, MANU/SC/0009/1950 : AIR 1951 SC 41: 1951 SCJ 29: 1950 SCR 869. Article 14 applies to all persons and is not limited to citizens. A corporation which is a juristic person, is also entitled to the benefit of this Article. The equality before law is guaranteed to all without regard to race, colour or nationality.

#### **Legislative Classification- Define legislative classification**

Article 14 forbids class legislation, but does not forbid classification or differentiation which rests upon reasonable grounds of distinction. The principle of equality does not mean that every law must have universal application to all persons who are not by nature, attainment or circumstances in the same position. *Chiranjit Lal Chowdhary v. Union of India*, MANU/SC/0009/1950 : AIR 1951 SC 41: 1951 SCJ 29: 1950 SCR 869. Fazal Ali observed- "The guarantee of the equal protection of laws means the protection of equal laws. It forbids class legislation but does not forbid classification which rests upon reasonable grounds of distinction".

*Kedar Nath Bajoria v. State of West Bengal*, MANU/SC/0082/1953 : AIR 1953 SC 404: 1953 Cr LJ 1621: 1953 SCJ 580: 1954 SCR 30. The equal protection of the law guaranteed by article 14 of the Constitution does not mean that all the laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purpose of legislation.

*R.K. Garg v. Union of India*, AIR 1981 SC 2138: 1981 11 Tax Caw Rev 277 (SC). The reasonable classification must not be arbitrary, artificial or evasive but must be based on some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislation.

#### **Test of Reasonable Classification**

The doctrine of classification is only a subsidiary rule evolved to give practical content to the doctrine of equality, but over-emphasis on classification would result in substitution of doctrine of classification for doctrine of equality.

In order to pass the test for permissible classification two conditions must be fulfilled, namely-

1. The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and
2. The differentia must have a rational relation to the object sought to be achieved by the statute in question.

### **Define guidelines enumerated in Ram Krishna Dalmia v. Delhi Admn**

Ram Krishna Dalmia v. Delhi Administration, MANU/SC/0024/1958 : AIR 1958 SC 538: 1959 SCJ 147: 1959 SCR 279.

The Supreme Court has established certain important principles which holds the scope of permissible classification.

These may be stated as below:-

1. A law may be constitutional even though it relates to a single individual if on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be treated as a class by himself.
2. There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.
3. It must be presumed that the legislature understands and correctly appreciates the need of its own people that its laws are directed to problems made manifest by experience.
4. The legislature is free to recognise the degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest.
5. There is no right to equality in illegal acts. Discretion cannot be alleged on the ground that somebody has obtained an illegal benefit.
6. A classification need not be scientifically perfect or logically complete.
7. In order to sustain the presumption of constitutionality, the court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.
8. The validity of a rule has to be judged by assessing its over-all effect and not by picking up exceptional cases. What the Court has to see is whether the classification made is just taking all aspects into consideration.
9. The Court must look beyond the ostensible classification and to the purpose of the law and apply the test of "palpable arbitrariness" in the context of the felt needs of the times and societal exigencies informed by experience to determine reasonableness of classification.

### **New Approach to Equality**

#### **E.P. Royappa case and case Vishaka case**

E.P. Royappa v. State of Tamil Nadu, MANU/SC/0380/1973 : AIR 1974 SC 555: (1974) 4 SCC 3: (1974) 2 SCR 348.

The Supreme Court pronounced the new principle in article 14 in the following words.

"Equality is a dynamic concept with many aspects and dimensions and it cannot be 'cribbed, cabined and confined' within traditional and doctrinaire limits. From a positivistic point of view equality is antithetic to arbitrariness. In fact equality and arbitrariness are sworn enemies. One belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of article 14".

Maneka Gandhi v. Union of India, MANU/SC/0133/1978 : AIR 1978 SC 597: (1978) 1 SCC 248: (1978) 2 SCR 621: 1978 (2) SCJ 312. Bhagwati, J., very clearly laid down the principle of reasonableness in article 14. He said-- "Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which logically as well as philosophically, is an essential element of equality or non-arbitrariness pervades article 14 like a brooding omnipresence".

R.K. Garg v. UOI, AIR 1981 SC 2138: 1981 11 Tax Caw Rev 277 (SC) (Bearer Bonds case). The Special Bearer Bonds Immunities and Exemptions Act, 1981, which, in order to canalize black money for productive purposes authorized investment of such money in bearer bonds with full immunity and exemptions under the Income-tax, Wealth-tax and Gift-tax Acts as well as from disclosure of sources to the investors in such bonds was upheld, among others, on the ground that it made a reasonable classification between those who had and who did not have black money and that this classification had a nexus with the object of the law, namely, to canalize black money for productive purposes.

Ajay Hasia v. Khalid Mujib Sehravardi, MANU/SC/0498/1980 : AIR 1981 SC 487: (1981) 1 SCC 722: (1981) 2 SCR 79. The Supreme Court observed that the doctrine of classification which is evolved by the courts is not paraphrase of article 14 nor is it the objective and end of that article. It is merely a judicial formula for determining whether the legislative, or executive action in question is arbitrary and therefore constituting denial of equality.

A.V. Nachane v. Union of India, MANU/SC/0251/1982 : AIR 1982 SC 1126: (1982) 1 SCC 205: (1982) 1 SCWR 203 (Popularly Known as LIC Bonus case). The Supreme Court upheld the constitutional validity of LIC Amendment Act, 1981 and the ordinance preceding it and the rules framed thereunder relating to bonus payable to class III and IV employees. It has been held that IMNS is distinct and separate class by itself, even though it is a part of the Indian Army. In other words, permissible classification would include a class even though it is a post of a largest class.

D.S. Nakara v. UOI, MANU/SC/0237/1982 : AIR 1983 SC 130: (1983) 1 SCC 305: 1983 UJ (SC) 217: 1983 (1) SCJ 188. The Supreme Court held that the fundamental principle is that article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the two tests of classification being founded on an intelligible differentia which distinguished persons or things that are grouped together.

Mithu v. State of Punjab, MANU/SC/0065/1983 : AIR 1983 SC 473: 1983 Cr LJ 811: (1983) 2 SCC 277: 1983 (1) SC 327. The Court struck down section 303 of the Indian Penal Code as unconstitutional on the ground that the classification between persons who commit murders whilst under the sentence of the imprisonment and those who commit murders whilst they were not under the sentence of life imprisonment for the purpose of making the sentence of death mandatory in the case of the former class and optional in the latter class was not based on any rational principle.

Air India v. Nargesh Meerza, MANU/SC/0688/1981 : AIR 1981 SC 1829: (1981) 4 SCC 335. A regulation providing for termination of service of an air hostess in Air India International on her first pregnancy has been held to be arbitrary and abhorrent to the notions of a civilized society.

Sanjit Ray v. State of Rajasthan, MANU/SC/0254/1983 : AIR 1983 SC 328: 1983 UJ (SC) 161: (1983) 1 SCC 525: (1983) 1 SCWR 346. Exclusion from the Minimum Wages Act, of the workmen employed by government on famine relief work, and payment to them of wages lower than the minimum wages, violates article 14. The rights of all the workers will be the same whether they are drawn from an area affected by drought and scarcity conditions or come from elsewhere.

K. Nagaraj v. State of Andhra Pradesh, AIR 1985 SC 524: (1985) 1 SCC 523. The Court held that the reduction of age of retirement was not arbitrary and unreasonable and violative of article 14 as it was taken by the Government after due consideration and with a view to providing employment opportunities to younger sections of society.

Revathi v. Union of India, MANU/SC/0562/1988 : AIR 1988 SC 835: JT 1988 (1) SC 419. The Supreme Court held that section 497 of IPC, the offence of adultery can be committed only by a male and not by a female who cannot even be punished as an abettor. As this provision makes a special provision for women the Supreme Court

held that sex is a sound classification and although there can be no discrimination in general on that ground. The Constitution itself provides for special provisions in the case of women and children.

Vishaka v. State of Rajasthan, MANU/SC/0082/1997 : AIR 1997 SC 301: 1997 AIR SCW 3043: (1997) 6 SCC 241: 1997 (3) SCJ 584. The Supreme Court laid down the guidelines to prevent sexual harassment of working women in places of their work until a legislation is enacted for this purpose. Gender equality includes protection from sexual harassment and right to work with dignity, which is universally recognised basic human right. The Court has laid down the following guidelines-

1. All employees or persons in-charge of work place in the public and private sector should take appropriate steps to prevent sexual harassment without prejudice to the generality of his obligation. He should take the following steps-

(a) Express prohibition of sexual harassment which include physical contact and advances, a demand or request for sexual favours, sexually coloured remarks, showing pornographic or any other unwelcome physical, verbal or non-verbal conduct of sexual nature should be noticed, published and circulated in appropriate ways.

(b) The rules and regulation of Government and Public Sector bodies relating to conduct and discipline should include Rules prohibiting sexual harassment and provide for appropriate penalties against the offender.

(c) As regard to private employees, the above prohibitions should be included in standing order under the Indian Employment (Standing Orders) Act, 1946.

(d) Appropriate work conditions should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment towards women at work.

2. Where such conduct amounts to specific offences, under the Indian Penal Code or under any other law, the employer shall initiate appropriate action in accordance with law making a complaint with appropriate authority.

3. The victims of sexual harassment should have option to seek transfer of the perpetrator or her own transfer.

## **Equal Pay for Equal Work**

### **What is equal pay for equal work?**

Although the principle of equal pay for equal work has not been declared as fundamental right in part-third of our Constitution, article 39(d) contains directive principles of equal pay for equal work for both men and women.

In Randhir Singh v. Union of India, MANU/SC/0234/1982 : AIR 1982 SC 879: (1982) 1 SCC 618: 1982 UJ (SC) 193: 1982 (1) SCJ 283. Supreme Court has laid down that directive principles should be read into the fundamental rights as a matter of interpretation of articles 14 and 16. The Court said- "Construing articles 14 and 16 in the light of the Preamble and article 39(d) we are of the view that the principle of equal pay for equal work is deducible from those articles and may be properly applied to cases of unequal scales of pay based on irrational classification".

D.S. Nakara v. Union of India, MANU/SC/0237/1982 : AIR 1983 SC 130: (1983) 1 SCC 305: 1983 (1) SCJ 188: (1983) 1 SCWR 390. Article 39(d) enjoins a duty to see that there is equal pay for equal work for both men and women and this directive should be understood and interpreted in the light of the judgment of this court in Randhir Singh case.

Daily Rated Casual Labour Employed under P and T Department v. Union of India, MANU/SC/0434/1987 : (1988) 1 SCC 122: AIR 1987 SC 2342: JT 1987 (5) SC 164. It has been held that the daily rated casual labourer in P&T Department who were doing similar work as done by the regular workers of the department were entitled to minimum pay in the pay scale of the regular workers plus D.A. but without increments.

**Article 15** ensures equal access of all the citizens to public places. It deals with

- (i) prohibition of discrimination by the state among citizens on the grounds of caste, religion, race, sex, place of birth or any of them and
- (ii) The state will ensure their access to all public places without any discrimination on the above ground/s. However
- (iii) nothing in this article shall prevent the state from making any special provision for women and children,
- (iv) The Indian Journal of Political Science 782 state can make special provision/s for the advancement classes of citizens or for the SCs and STs. (inserted by reservation for citizens of clause iv even in privately by 93rd CAA 2006).

**Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15)**

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 ground 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 places 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 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, or the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and Scheduled Tribes insofar as such special provisions relate to their admission to educational institutions including private educational institution, whether aided or unaided by the State, other than the minority educational institution referred to in clause (1) of article 30.

Clause (1) - Article 15(1) prohibits differentiation on certain grounds mentioned above. In *Valsamma Paul v. Cochin University*, MANU/SC/0275/1996 : AIR 1996 SC 1011: 1996 AIR SCW 492: (1996) 3 SCC 545: (1996) 1 SCR 128, the Supreme Court observed that article 15(1) prohibits discrimination on ground of religion or caste identities so as to foster national identity which does not deny pluralism of Indian culture but rather to preserve it.

Article 15(1) is an extension of article 14. Article 15(1) expresses a particular application of the general principle of equality embodied in article 14. Article 15 is a facet of article 14. Like article 14, article 15(1) also covers the entire range of state activities. But, in a way, the scope of article 15 is narrower than that of article 14 in several respects.

One - While article 14 is general in nature in the sense that it applies both to citizens as well as non-citizens, article 15(1) covers only the Indian citizens, and does not apply to non-citizens. No non-citizen can claim any right under article 15, though he can do so under article 14.

Two - While article 14 permits any reasonable classification on the basis of any rational criterion, under article 15(1) certain grounds mentioned therein can never form the basis of classification.

The expression 'discriminate against' means, according to the Oxford Dictionary "to make an adverse distinction with regard to, to distinguish unfavorably from others".

Nainsukh v. State of Uttar Pradesh, MANU/SC/0061/1953 : AIR 1953 SC 384: 1953 SCJ 546: 1953 SCR 1184. It was held that a law providing for election to municipalities on the basis of separate electorates for members of different religious communities was unconstitutional for violation of article 15(1).

Madhu Limaye v. Superintendent, Tihar Jail, Delhi, MANU/SC/0150/1975 : AIR 1975 SC 1505: (1970) 1 SCC 525: 1975 SCC (Cri) 235: (1975) 3 SCR 582. Article 15 prohibits classification on the basis of racial superiority.

D.P. Joshi v. State of Madhya Pradesh, MANU/SC/0012/1955 : AIR 1955 SC 334: 1955 SCJ 298: 1955 SCR 1215. The Supreme Court held that a law which discriminates on the ground of residence does not infringe article 15. In this case the residents of Madhya Pradesh were exempted from payment of a capitation fee for admission to the State Medical College, while the non-residents were required to pay the same. The Supreme Court negated the plea of discrimination by the non-residents under article 15(1) because the ground of exemption was 'residence' and not 'place of birth'. Residence and place of birth are two distinct concepts. Article 15(1) prohibits discrimination on the basis of place of birth but not on residence.

Pradeep Jain v. Union of India, MANU/SC/0047/1984 : AIR 1984 SC 1420: (1984) 3 SCC 654. In this case, the residential requirement for admission to medical colleges was challenged. The Supreme Court has held that such conditions are inconsistent with the idea of national unity and integration and though in given circumstances may be justified both under articles 14 and 15(1) at the moment not more than 70% of seats should be reserved on ground of residence at the M.B.B.S. level. There should be no reservation on the basis of residence at the M.S. and M.D. Levels.

Clause (2) - Article 15(2) contains the provision of a general nature and is not confined to the State only. On the basis of this provision it has been held that if a section of the public puts forward a claim for an exclusive use of public well, it must establish that the well was dedicated to the exclusive use of that particular section of the public and not to the use of general public. (Arumugha v. Narayana, AIR 1958 Mad 282) Clause (2) is intended to eradicate certain customs prevailing in the Indian society which did not allow persons of certain castes and religion to use wells, ghats and other public places. They were meant exclusively for higher castes of Hindus. Clause (2) provides that no citizen shall on grounds only of religion, race, caste, sex, place of Birth

or any of them be subjected to any disability, liability, restriction or condition with regard to access and use of places mentioned in clauses (a) and (b).

### **On ground 'only'**

The word 'only' connotes that what is discountenanced is discrimination purely and solely on account of any of the grounds mentioned. A discrimination based on any of these grounds and also on other grounds is not hit by articles 15(1) and 15(2) though it may be hit by article 14.

State of Bombay v. Bombay Education Society, MANU/SC/0029/1954 : AIR 1954 SC 561: 1954 SCJ 678: 1955 SCR 568. In that case the issue was the validity of the Bombay Government Order directing schools having English as medium of instruction to admit only Anglo-Indians and citizens of Asiatic descent. The Court held the order invalid since the result of the order was the denial of admission to all pupils whose mother tongue was not English i.e., they were discriminated on the ground of language only.

Clause 3 - Articles 15(3) and 15(4) constitutes exceptions to articles 15(1) and 15(2). According to article 15(3), the State is not prevented from making any 'special provision for women and children'. Articles 15(1) and 15(2) prevent the State from making any discriminatory law on the ground of gender alone. The Constitution vests on equality of status and it negates gender bias. Article 15(3) recognises the fact that the women in India have been socially and economically handicapped for centuries and as a result thereof, they cannot fully participate in the socio-economic activities of the nation on the footing of equality. The purpose of article 15(3) is to eliminate this socio-economic backwardness of women and to empower them in such a manner as to bring about effective equality between men and women.

Yusuf Abdul Aziz v. State of Bombay and Husseinbhoj Laljee, MANU/SC/0124/1954 : AIR 1954 SC 321: 1954 Cr LJ 886: 1954 SCJ 385: 1954 SCR 930. The validity of section 497 of the Indian Penal Code was challenged on the ground that it discriminates on the ground of sex insofar as it punishes a man for adultery but does not punish the wife. It was held that the law was valid because discrimination was not based on the ground of sex only but also on the other considerations.

Clause 4. This clause was not in the article as originally enacted. It was added by the Constitution (First Amendment) Act, 1951. The object of the amendment was to bring articles 15 and 29 in line with article 16(4)

State of Madras v. Champakam Dorairajan, MANU/SC/0007/1951 : AIR 1951 SC 226: 1951 SCJ 313: 1951 SCR 525. In that case the reservation of seats for non-Brahmins, Backward Hindus, Harijans, Anglo-Indians, Indian Christians and Muslims was held to offend articles 15(1) and 29(2). The Court held that the omission of a clause like 16(4) from article 29 indicated the intention of the constitution makers not to introduce communal consideration in matters of admission to educational institutions.

### **Indra Sawhney case**

Indra Sawhney v. Union of India, MANU/SC/0104/1993 : AIR 1993 SC 477: 1992 AIR SCW 3682: JT 1992 (6) SC 273: 1993 (1) SCJ 353. Clause (a) enables the State to make special provisions for the advancement of socially and educationally Backward Classes of citizens or for the Scheduled Castes and Scheduled Tribes. Such provisions include reservations or quotas and can be made in the exercise of executive powers without any legislative support.

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

- (i) Who are socially and educationally backward classes?
- (ii) What is the limit of reservation?

### **What is backward or more backward classes?**

Though, article 340 contemplates appointment of a Commission to investigate the conditions of 'socially and educationally backward classes' but no such definition of the backward classes is there anywhere in the Constitution. M.P. Balaji v. State of Mysore, MANU/SC/0080/1962 : AIR 1963 SC 649: (1963) 2 SCA 1: (1963) SUPP 1 SCR 439. The object of article 15(4) is to advance the interest of the society as a whole by looking after the interest of the weaker sections of the society. In this case Supreme Court held that the caste of a group of persons cannot be the sole or even predominant factor though it may be a relevant test for ascertaining whether a particular class is a backward class or not backwardness under article 15(4) must be social and educational and that social backwardness is in the ultimate analysis, the result of poverty. The Court held that the sub-classification made by the order between 'backward classes' and 'more backward classes' was not justified under article 15(4). "Backwardness" as envisaged by article 15(4) must be both social and educational and not either social or educational. Though caste



may be a relevant factor but it cannot be the sole test for ascertaining whether a particular class is a backward class or not.

D.N. Chanchala v. State of Mysore, AIR 1971 SC 1765: 1971 (Supp) SCR 608. The reservation under clause 5 though apparently appearing on the high side not having shown as unreasonably excessive, the contention with regard to it must fail.

E.V. Chinnaiah v. State of Andhra Pradesh, MANU/SC/0960/2004 : AIR 2005 SC 162: 2004 AIR SCW 6419: (2005) 1 SCC 394: 2004 (8) Supreme 810. The Apex Court held that reservation of posts and appointment must be with reasonable limits viz. 50% at the maximum. Reservation to a backward class is not a constitutional mandate, but a prerogative of the State. The Court also said that article 341 indicates that there can be only one list of Scheduled Castes in regard to a State and that list should include all specified castes, races or tribes or part or groups notified in that Presidential List. In the entire Constitution wherever there is a reference about Scheduled Caste, it refers to a list prepared by the President under article 341.

Valsamma Paul v. Cochin University, AIR 1996 SC 345. It was held that the appellant as a member of Latin Catholic would not be entitled to reservation under article 15(4) because she as a member of forward caste had an advantageous start in life and after completing her education and becoming major married a Latin Catholic. Therefore, she would not be entitled to reservation given to Latin Catholic Backwards.

Dr. Neelima v. Dean of PG Studies, AP Agriculture University, Hyd., MANU/AP/0040/1993 : AIR 1993 AP 229: 1993 (1) AP LJ 140: 1993 (1) Andh LT 458. In this case Appellant belonged to caste Raddy by birth. She married to a boy belonging to Scheduled Tribe. It was held that she was not entitled to reservation. The Court held that the high caste girl marrying a boy belonging to ST is not entitled to the benefit of reservation available to Scheduled Tribes.

Ajay Kumar v. UOI, MANU/SC/0978/2006 : AIR 2006 SC 1177: 2006 AIR SCW 888: (2006) 3 SCC 257: 2006 (2) SCJ 472. A tribal woman married a non-tribal by court marriage and her son was brought up in forward family. The Supreme Court held that offshoots of such marriage cannot claim status of Scheduled Tribe. Casual visit to village in holidays cannot constitute acceptance by the community.

Clause 5 - The clause (5) is added by the Constitution (93rd Amendment) Act, 2006. Which provides for reservation of backward and Scheduled Caste and Scheduled Tribes classes in educational institutions including private educational institutions.

P.A. Inamdar v. State of Maharashtra, MANU/SC/0482/2005 : AIR 2005 SC 3226: 2005 AIR SCW 3923: (2005) 6 SCC 537: 2005 (5) SCJ 746. The Supreme Court ruled that there cannot be reservation in private educational institutions, which are not receiving aid from the government. To make this decision ineffective Ninety-third Amendment to the Constitution was made which inserted clause (5) in article 15.

Ashok Kumar Thakur v. UOI, 2008 AIR SCW 2899: AIR 2008 SC (Supp) 1, a five-judge Bench of the Supreme Court headed by Chief Justice K.G. Balakrishnan held that the Constitution (93rd Amendment) Act, 2006 providing 27 percent. reservation in admission to OBC Candidates in higher educational institutions like IIT's and IIM's is constitutional. The court held that reservation must be reviewed after five years.

**Article 16** is concerned with equality in matter citizens,

- (i) There shall be equality of opportunity for all or appointment to any office under the state.

- (ii) No citizen against any appointment or employment under the sex, descent, place of birth, residence or any of them, the residence to a class or classes for employment provision/s for the reservation of appointment or which in its opinion is not adequately represented in provision for reservation in matter of promotion to any service in favour of SCs and STs. (inserted by 85th the backlog quota and carry it forward beyond the limit 85th CAA, 2001 ).

### **Equality of Opportunity in matters of public employment (Article 16)**

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 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.
- 4A. Nothing in this article shall prevent the state from making any provision for reservation 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.
- 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 on 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".

Article 16 guarantees equality of opportunity in matter of employment under the state. This right is available to citizen only. It does not however prevent the state from prescribing the necessary qualifications and selective tests for recruitment for Government services.

General Right of Equal Opportunity. Clause (1) -

Clause (1) provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state. It confers a general right of equality of opportunity for all citizens in matters of employment under the state. The equality of opportunity takes within its fold all stages of services from initial appointment to its termination, but equality is relative not absolute.

All-India Station Masters' and Assistant Station Masters' Association, Delhi v. General Manager, Central Railway, MANU/SC/0192/1959 : AIR 1960 SC 384: (1960) 2 SCR 311. Equality of opportunity in matter of employment can be predicted only as between who are either seeking the same employment or have obtained the same employment and the equality of opportunity in matters of employment under article 16(1) means equality between members of the same class of employees and not equality between members of separate independent classes.

State of Mysore v. H. Srinivasamurthy, MANU/SC/0457/1976 : AIR 1976 SC 1104: (1976) 1 SCC 817: (1976) 3 SCR 255. It has been held by Supreme Court that equality is violated if it rests on some reasonable basis. A reasonable classification should include all those who are similarly situated and none who is not and in deciding who are similarly situated one has to look to the object sought to be achieved by the legislation in question and mischief sought to be eliminated by it.

Ajay Hasia v. Khalid Mujib Sehravardi, MANU/SC/0498/1980 : AIR 1981 SC 487: (1981) 1 SCC 722: (1981) 2 SCR 79. An arbitrariness in selection process will violate articles 14 and 16. Thus, it has been noted that allotment of excessive marks in competitive tests may lead to arbitrariness but the same test may not be applied in cases of selection/promotion of persons already in service for a higher post.

Akhil Bhartiya Shoshit Karamchari Sangh (Railway) v. UOI, MANU/SC/0058/1980 : AIR 1981 SC 298: (1981) 1 SCC 246: (1981) 2 SCR 185. The categorization of Scheduled Castes and Scheduled Tribes as a class on the basis of which the classification could be justified as just and reasonable within the meaning of articles 15(1) and 16(1) because these classes stand on a substantially different footing from the rest of the Indian community in our Constitution.

Kishor Mohanlal Bakshi v. Union of India, MANU/SC/0389/1961 : AIR 1962 SC 1139: 1962 44 ITR 532. The rules made Income-Tax Officer of class I eligible for appointment as Assistant Commissioner, but Income-Tax Officer of class II were made eligible for appointment as Income-Tax Officer class I but not for promotion to the post of Assistant Commissioner. The rules were held valid because there can be no question of equality of opportunity between persons holding posts in different grades.

Vijay Kumar Sharma v. Chairman Social Service Commission, MANU/SC/0279/2001 : AIR 2001 SC 1691: 2001 AIR SCW 1744: (2001) 4 SCC 289: 2001 (3) Supreme 451. Life of selection panel for general category was extended but despite the fact that there were vacancies, life of selection panel for OBC category was not extended. It was held that non-extension of life of panel for OBC category was not justified.

B.C.P.P. Mazdoor Sangh v. N.T.P.C., MANU/SC/8013/2007 : AIR 2008 SC 336: 2007 AIR SCW 6879: (2007) 12 SCALE 204: 2007 (7) Supreme 704. The employees were recruited and appointed by PSU (NTPC) and governed by service terms and conditions as applicable to NTPC employees. The court held that the contract of service cannot be changed retrospectively without tripartite agreement and pre-decision hearing to employee. The court held that it amounted to arbitrariness and is violative of article 14 of the Constitution of India.

Clause (2) -

Clause (2) of article 16 rules out some bases of classification. It provides that no citizen shall on ground only of religion, race, caste, sex descent, place of birth, place of residence or any of them be ineligible for or discriminated against in respect any office or employment under the State. Thus, it prohibits categorization of employees for subjecting them to differential treatment solely on the aforesaid grounds unless the case comes within clauses (3) to (5).

B. Venkataraman v. State of T.N., MANU/SC/0080/1951 : AIR 1951 SC 229: 1951 SCJ 318. Reservation of posts in favour of Hindus, Muslims, Christian was held to be violative of article 16(2). Gazula Dasaratha Rama Rao v.

State of AP, MANU/SC/0040/1960 : AIR 1961 SC 564: (1961) 2 SCR 931. The office of the hereditary village munsif is an office under the State because the appointment is made by the Collector, emoluments are granted by the State, and the Collector has the power to remove, suspend or dismiss him.

C.B. Muthamma v. Union of India, AIR 1979 SC 1868: (1979) 4 SCC 260. The Supreme Court invalidated rule 8(2) of the Indian Foreign Service (Recruitment, Cadre, Seniority and Promotion) Rules, 1961 and observed that if the family and domestic commitments of a woman member of the service is likely to come in the way of efficient discharge of duties a similar situation may well arise in the case of a male member.

Gazula Dasaratha Rama Rao v. State of Andhra Pradesh, MANU/SC/0040/1960 : AIR 1961 SC 564: (1961) 2 SCR 931. Madras Hereditary Village Offices Act, 1895 was held to be void because it provided for selection for a new office from among the families of the last holder of the office which had been abolished and, therefore, made discrimination on ground of descent.

Clause (3) -

Clause (3) of article 16 authorizes Parliament to prescribe requirement of residence in a State or Union territory for certain employment under the government or local authorities within that State or Union territory. The purpose of clause (3) is to provide for an opportunity of employment to residents of an underdeveloped State where in the normal condition they could not compete with the residents of more developed States.

A.V.S. Narasimha Rao v. State of Andhra Pradesh, MANU/SC/0494/1969 : AIR 1970 SC 422: (1970) 1 SCA 51: 1970 (1) SCJ 365: (1970) 1 SCR 115. The Supreme Court declared that part of the Act unconstitutional which prescribed a residence qualification for government services in Telangana, a part of the State of Andhra Pradesh. The Court took the view that under article 16(3), Parliament can impose a residential qualification for services in the whole State, but not in a part of the State.

Clause (4) -

Under article 16(4) the state may make reservation of appointment or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the public services under the State. The term 'State' denotes both the Central and the State Governments and their instrumentalities.

1. M.R. Balaji v. State of Mysore, MANU/SC/0080/1962 : AIR 1963 SC 649: (1963) 2 SCA 1: (1963) Supp 1 SCR 439. The Supreme Court has held that the caste of a person cannot be the sole test for ascertaining whether a particular class is a backward class or not. Though caste of a person cannot be the sole test for determining the backwardness of a class, but if an entire caste is found to be socially and educationally backward it may be included in the test of backward classes.

2. T. Devadasan v. Union of India, MANU/SC/0270/1963 : AIR 1964 SC 179: (1964) 4 SCR 680. In this case the Court was called upon to pronounce upon the constitutionality of the carry forward rule framed by the Central Government to regulate appointment of persons belonging to backward classes in public services. The Court by majority did not invalidate the rule of carry forward as such but the rule as amended in 1955 on the ground that the power vested in the State Government under article 16(4) cannot be so exercised as to deny reasonable equality of opportunity in matter of public employment to members of classes other than backward.

3. Mohan Kumar Singhania v. Union of India, AIR 1992 SC 426: 1992 SCC (L&S) 455: (1992) Supp 1 SCC 594. The Supreme Court has stated that article 16(4) is an enabling provision conferring a discretionary power on the State for making any provision or reservation of appointments or parts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the service of the State. Article 16(4) neither impose any constitutional duty nor confers any fundamental right on anyone for claiming reservation.

4. State of Kerala v. N.M. Thomas, MANU/SC/0479/1975 : AIR 1976 SC 490: (1976) 2 SCC 310: (1976) 1 SCR 906: 1976 SCWR 207. The Supreme Court held that it was permissible to give preferential treatment to Scheduled Castes and Scheduled Tribes under article 16(1) outside article 16(4). The Court observed that article 16(4) is not in the nature of an exception of article 16(1). It is a facet of article 16(1) which fosters and further the idea of equality of opportunity with special reference to an under privileged and deprived class of citizens.

5. Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India, MANU/SC/0058/1980 : AIR 1981 SC 298: (1981) 1 SCC 246: (1981) 2 SCR 185. The Court again upheld reservation of posts at various levels and making of various concession in favour of the Members of the Scheduled Castes and Scheduled Tribes. Thus the classification between SC and ST candidates from the rest of the communities for the purpose of reservation is just and reasonable because they constitute a class by themselves because of their social backwardness.

### **The guidelines given by the Supreme Court in Indira Sawhney case**

Indira Sawhney v. Union of India, MANU/SC/0104/1993 : AIR 1993 SC 477: 1992 AIR SCW 3682: JT 1992 (6) SC 273: 1993 (1) SCJ 353. Known as Mandal Commission case, is a very significant pronouncement of the Supreme Court on the question of reservation of posts for backward classes. The court has dealt with this question in a very exhaustive manner and summarized as follows-

1. Backward class of citizens in article 16(4) can be identified on the basis of caste and not only on economic basis.
2. Article 16(4) is not exception to article 16(1). It is an instance of classification. Reservation can be made under article 16(1).
3. Backward classes in article 16(4) are not similar to as socially and educationally backward on article 15(4).
4. Creamy-layers should be excluded from backward classes.
5. Article 16(4) permits classification of backward classes into backward and more backward classes.
6. A backward class of citizens cannot be identified only and exclusively with reference to economic criteria.
7. Reservation shall not exceed 50%.
8. Reservation can be made by executive order.
9. No reservation in promotion.
10. Permanent statutory body to examine complaints of over-inclusion or under-inclusion.
11. There is no need to express any opinion on the correctness or adequacy of the exercise done by the Mandal Commission.
12. Disputes regarding new criteria can be raised only in the Supreme Court.

In this case, the Supreme Court has taken cognizance of many complex but very momentous questions having a bearing on the future welfare and stability of the Indian society. The Court has delivered very thoughtful, creative and exhaustive opinion dealing with various aspects of the reservation problem. After the pronouncement of the Indira Sawhney case, it has been observed that the court was not able to completely eliminate the caste factor in identifying the backward classes. However, the court has sought to keep the caste factor within limits. Caste can be one factor but cannot be the sole factor, to assess backwardness. After Indira Sawhney, two Constitutional Amendments have been incorporated in Article 16(4) to tone down the impact of the Supreme Court pronouncement. Article 16(4A) - This clause has been added to the Constitution by the 77th Amendment Act, 1995 which provides that rule of reservation can now apply not only to initial recruitment but also to promotion as well

where the State is of the opinion that the Scheduled Castes and Scheduled Tribes are not adequately represented in promotional posts in services under the State.

Union of India v. Virpal Singh Chauhan, MANU/SC/0113/1996 : AIR 1996 SC 448: 1995 AIR SCW 4309: JT 1995 (7) SC 231: MANU/SC/0113/1996 : (1995) 6 SCC 684. The Supreme Court held that seniority between reserved category candidates and general candidates shall continue to be governed by their panel position prepared at the time of selection.

Ajit Singh (II) v. State of Punjab, MANU/SC/0575/1999 : AIR 1999 SC 3471: 1999 AIR SCW 3460: (1999) 7 SCC 209: 1999 (8) Supreme 211. The Court has now stated that the primary purpose of article 16(4) is due representation of certain classes in certain posts. But, along with article 16(4), there are articles 14, 16(1) and 335 as well. Articles 14 and 16 lay down the permissible limits of the affirmative action by way of reservation which may be taken under articles 16(4) and 16(4A). Article 335 ensures that the efficiency of administration is not jeopardized. Articles 16(4) or 16(4A) contains no directive or command, it is only an enabling provision. It imposes no constitutional duty on the state and confers no fundamental right on any one. It is necessary to balance article 16(1) and articles 16(4) and 16(4A). The interest of the reserved classes must be balanced against the interests of other segment of society.

M.G. Badappanavor v. State of Karnataka, AIR 2001 SC 260: 2000 AIR SCW 4340: (2001) 2 SCC 666: 2001 (1) Supreme 306. The Supreme Court has again confirmed and directed that the seniority lists as between the general and reserved promotees, and promotions, be reviewed in the light of the ruling of earlier cases The Court directed that the seniority of the general candidates be restored accordingly.

Ashok Kumar Thakur v. State of Bihar, MANU/SC/0011/1996 : (1995) 5 SCC 403: AIR 1996 SC 75: 1995 AIR SCW 3731: 1995 (3) SCJ 705. The Supreme Court has quashed the economic criteria laid down by the Bihar and Uttar Pradesh Governments for identifying the affluent sections of the backward classes and exclude them for the purpose of job reservation and held that the criteria for identification of creamy layer is violative of article 16(4) and article 14 and against the law laid down by this Court in Mandal Commission case. Article 16(4B) - By the Constitution (Eighty-first Amendment) Act, 2000 a new clause (4B) has been inserted in article 16 which provides that 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 provisions 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 filled-up for determining the ceiling of fifty per cent. reservation or total number of vacancies of that year. This amendment envisages that the unfilled reserved vacancies in a year are to be carried forward to the subsequent years and that these vacancies are to be treated as distinct and separate from the current vacancies during any year. The rule of 50% reservation laid down by the Supreme Court is to be applied only to the normal vacancies and not to the posts of backlog of reserved vacancies. This means that the unfilled reserved vacancies are to be carried forward year to year without any limits are to be filed separately from the normal vacancies.

Clause (5) -

Article 16(5) says that a 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 shall not be treated to be repugnant to this article.