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# Article 15 of the Indian Constitution - No Discrimination

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## ABSTRACT

*This research paper focusses on the provisions of Article 15 of the Constitution of India that widely discusses about protection of citizens of India from any type of discrimination. India is a very diverse country and has people following different religions, beliefs, speaking different languages, cultural differences, etc., in a country with such diversity, discrimination occurs definitely. For the protection of the rights and interests of the citizens, the Article 15 exists. It protects the citizens of India from racism, untouchability, discrimination on the basis of religion, gender, and various other forms of discrimination. The type of discrimination that is widely evident in India is the discrimination based on caste system. The division of lower caste and upper caste is the birth of discrimination and untouchability, even though untouchability is an offence in India now and abolished, there are still parts of India, where people face untouchability due to lack of legal awareness and caste beliefs. The people divided as lower castes are discriminated the most for being born under a particular caste that is believed to be ranked low from those people who are born in higher caste, this leads to discrimination. The Article 15 strictly describes such discrimination as an offence and people who are found guilty of such offence are punished and penalized. For economic advancements of the socially backward classed due to such discrimination that took place in India before independence, the Constitution of India provides reservation to the Scheduled Castes, Scheduled Tribes, and Other Backward Classes of the citizens. In 2019, another category of weaker section was added by insertion of Clause (6) in Article 15, the Economically Weaker Sections (or the EWS). The Article 15 provides reservation to the people from these sections in educational institutions, in government jobs as well as in some private jobs. It is done for providing them an equal opportunity to advance economically as they are backward financially and socially due to the discrimination, struggles, and challenges they have faced pre-independence. Not only on the basis of backwardness, but Article 15 also covers discrimination based on gender. Women have been fighting for equal rights and opportunities for a long period of time and slowly they are getting recognized even though the provisions existed way back since the 1950s. Article 15 covers the protection of women and providing them special provisions for the purpose of achieving the objective of equality as stated in the preamble of the*

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*Constitution of India. Women rights are widely considered with the dynamic changed being adapted by the society. Not only women, even the other genders of the LGBTQ+ communities have started gaining recognition and protection. There is still need for more provisions for the other genders of the LGBTQ+ communities, other than women, they face a lot of discrimination, verbal as well as physical abuse. Even their interests were not accepted until 2018 when the Section 377 of the Indian Penal Code was decriminalized. In countries other than India, the outbreak, and protests for them have been going on since 1952 and many nations have accepted them and have provided them protection through rights. Racism is also a form of discrimination seen in India that needs more stricter regulations. This paper explains and discusses elaborately the provisions of Article 15, the related case laws that have taken place over the years and critical analysis of the existing provisions and the need for changes.*

**Keywords:** Article 15, Discrimination, Reservation, Clause (6) of Article 15, Economically Weaker Sections, LGBTQ+, Section 377.

## I. INTRODUCTION

The Constitution of India provides various fundamental rights to its citizens and no discrimination based on religion, race, caste, place of birth, or gender. This is a very important right provided under Part III of the Constitution of India under Fundamental Rights. Discrimination based on religion and caste has existed in India for a longer period of time. Be it untouchability or the division of upper castes and lower castes, discrimination was evident all over India before independence. It does exist today also, but the consequence of such discrimination today is very severe and punishable.

India is a country with diversity in various aspects, cultural, religious, linguistic, etc. there are total 22 languages that are recognized by the 8<sup>th</sup> Schedule of the Constitution of India. But in real, there are more than 1,500 languages that are spoken even though Hindi and English are the official languages. More than 40% (43.63% approximately) speak Hindi in India. There are many religions also such as Hinduism, Christianity, Islam, Buddhism, Jainism, etc., followed by the Indian citizens. With greater diversity comes differences of opinions, and sometimes differences of opinions might lead to discrimination.

The widest discrimination that had happened in the past in India and still happens in some part of the country is based on the caste. People were categorized into lower castes and upper castes. Lower caste people were discriminated with untouchability. Untouchability means out-casting a group of people based on their caste by not allowing them to access public places like wells,

lakes, temples, etc., that were accessed by the people of the upper caste. This is such an unacceptable rule and thus is now illegal in India. Article 17 of the Constitution of India states that the practice of untouchability is abolished and forbidden in India, if any person is deprived of any rights the reason being untouchability, then such an action or omission is regarded as a punishable offence.

Discrimination of the Dalits (members of a lowest caste) is prevailing since age-old days. Though it has reduced with the evolution of laws and dynamic changes in the society, we cannot say that India is completely free of discrimination. In a report released by the Center of Human Rights and Global Justice and Human Rights Watch, it stated that more than 165 million Dalits in India are discriminated. The report was titled “Hidden Apartheid: Caste Discrimination against India’s Untouchables”. Though it is a 2007 report, discrimination and abuse against the Dalits still persists in India.

There were a series of cases that took place because of discrimination due to various facets. Religion and caste have most of the time been the reason behind discrimination in India. Discrimination based on gender is also not something new. Be it women, or someone from the LGBTQ+ community. Even the law recognized the people of LGBTQ+ community only in 2018 by decriminalization of Section 377. Even though the protests for the protection of the rights of the people from the LGBTQ+ community goes way back to 1969 in United States, after decades they are recognized and accepted in today’s world as a result of societal changes and growing human rights.

Discrimination is the worst type of torture one can face, it causes feelings of humiliation, mental distress, and isolation from the society. Since the Constitution of India came into force, the need and existence of Article 15 had been wide. Article 15 has 5 clauses that discusses the types of discrimination that are prohibited strictly. Restricting one from accessing to certain rights cannot be accepted at all. This paper explains in detail Article 15 of the Constitution of India.

### **(A) Research Questions**

By researching and writing this paper, the author aims to understand the following:

- ✓ How are citizens of India protected from various forms of discrimination?
- ✓ What is the scope, extent, and application of Article 15 of the Constitution of India?
- ✓ What are the new changes and amendment made in the Article 15?

### **(B) Research Objective**

This paper is written for comprehension of the protection of various rights provided under the Article 15 of the constitution that talks elaborately about discrimination under the Part III of Fundamental Rights of the Constitution of India.

## **II. ARTICLE 15**

### **Clause 1:**

Clause (1) of Article 15 states that there must be any kind of discrimination against any citizen of India based only on religion, race, caste, gender or place or birth. It is well known that India is a diverse country with multiple religions, cultural diversity, linguistic diversity and many more aspects. Even though castes are divided as scheduled castes/tribes, other backwards classes, general, etc., there shall not be any form of discrimination against anyone.<sup>2</sup>

Discrimination is a huge term, it involves various facets, it is an unjust treatment. There have been multiple cases related to unjust behaviour against the people of lower castes such as the Dalits. As per surveys, it is found out that the unfavorable bias against Dalits has increased by 6% from 2009 to 2018. There have been reports of various atrocious behaviour against the lower caste people. Even with the existence of other laws for their protection such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, cruelty against them still persists in corners of India.

The lower caste people have faced many difficulties like women being raped and other people killed in protests and caste related fights. Even recently, a rape case took place in September 2020, in which a 19-year-old Dalit girl was gang raped in Hathras district of Uttar Pradesh. There have been atrocities against them due to reasons not even of serious nature, for example, there was a case in April 2010 where fire was set on the houses of 18 Dalit people. It was because of a dog that barked at a higher caste man (Rajinder Pali who was son of a Jatt). 17-year-old girl Suman and her father who was 60 years old, Tara Chand were burnt alive as it was their dog that has barked.

Over the years there are laws made for the protection of the rights of people so that they are not discriminated against, but still it persists. The major reasons being punishments are not strict enough, and lack of adaptability of people. Acceptance of every human as equal in the society is only done in law, there are many parts of the world where people are yet to accept. Discrimination against humans will come to end only when what is written in the law is completely accepted by people also.

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<sup>2</sup> [https://www.constitutionofindia.net/constitution\\_of\\_india/fundamental\\_rights/articles/Article%2015](https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2015)

**Clause 2:**

Clause (2) of Article 15 states that no citizen of India can discriminate any citizen based on the grounds as mentioned in Clause (1). Sub-clause (a) of Clause (2) states that citizens should not restrict access public places such as shops, restaurants, hotels or any other place of public access solely on the basis of religion, race, caste, gender, place of birth or any of the mentioned basis.

Sub-clause (b) of Clause (2) states that no citizen can restrict any other citizen on the basis of religion, race, caste, gender, or place of birth from accessing the usage of tanks, wells, places of bathing, roads or any other public place that are maintained by the State funds or specially dedicated for the usage of the public.<sup>3</sup>

This is another important clause that explains how discrimination should be prevented and not practiced. The practice shall be unlawful and against the interest of the public policy. Restricting or prohibiting someone from accessing any place especially established for public usage by the State has no place and is illegal. Every citizen of India has the right to access any public place throughout the territory of India. Earlier exception was given to the State of Jammu and Kashmir, but now due to the abrogation of Article 370 of the Constitution of India.

**Clause 3:**

Clause (3) of Article 15 states that the provisions of this article cannot prevent the State to make laws of special provision for women and children.

A very important and significant case law on the context of this clause is the *Yusuf Abdul Aziz v. State of Bombay*<sup>4</sup>. In this case, the appellant was charged of adultery under Section 497 of the Indian Penal Code. The appellant, for the determination of the constitutionality of Article 228 of the Constitution that talks about transferring of certain cases to High Court. The main reason for to check whether Section 497 of the Indian Penal Code is contradictory to Article 14 and 15 of the Constitution.

In the case, it was said that Section 497 of the Indian Penal Code states that adultery can be committed by man only and women cannot be punished even as an abettor. This very reason led to the contradiction whether this is violation of Article 15 which includes no discrimination based on gender. But it was further stated that Clause (3) of Article 15 states that nothing given under Article 15 can prevent the State from making special provisions for women and children.

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<sup>3</sup> [https://www.constitutionofindia.net/constitution\\_of\\_india/fundamental\\_rights/articles/Article%2015](https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2015)

<sup>4</sup> AIR 1954 SC 321.

It was further argued that Clause (3) of Article 15 should not save women from commission of crimes or abetment of crimes. Another issue in this case was the appellant was not a citizen of India and there are certain fundamental rights which are exclusively for the citizens of India only. Therefore, Article 14 and 15 which are available for citizens of India only cannot be invoked by the appellant. The appeal was dismissed.

In another case, *Permjit Singh v. State of Punjab*,<sup>5</sup> the petitioner was elected as Panch for reserved seat of Scheduled Castes (women). The petitioner challenged the election of respondent number 5 as Sarpanch on the grounds that she was not eligible for contesting for the elections of Sarpanch which is reserved for the Scheduled Castes and not Scheduled Castes (women) because respondent was elected as Panch for Gram Panchayat only against reserved seat for Scheduled Castes (women).

The Court held that if the seat of Sarpanch of a village is reserved for Scheduled Castes, then both men and women belonging to the Scheduled Castes category can contest for the election for the said post as the eligibility is only being a Scheduled Caste and the nature of constituency they represent as Panches.

For the purpose of juvenile, in *Salil Bali v. Union of India*<sup>6</sup> it was held by the Supreme Court that fixing 18 years of age as an upper limit for treating offenders under juvenile cases was held as constitutionally valid.

#### **Clause 4:**

Clause (4) of Article 15 states that no provision of Article 15 or clause (2) of Article 29 can prohibit the State from the creation of special provisions of socially and educationally backward classes of citizens or the Scheduled Castes and Scheduled Tribes.

The major reason for why such a provision was included under Article 15 were two different case that took place. The first case was that the Madras Government issued an order stating the allotment of seats in the State medical and engineering colleges based on the community and caste of the students. This order was held to be violative of Clause (1) Article 15 stating that seats were allotted based on castes and religion of the students and not based on the merit<sup>7</sup>. A seven Judge Bench Judge quashed this order of allotting seats to students based on caste and not merit. Another case was the construction of a colony only for harijans which was held to be violative of Clause (1) of Article 15 as the same facilities are required by every citizen

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<sup>5</sup> AIR 2009 P & H 7.

<sup>6</sup> AIR 2013 SC 3743.

<sup>7</sup> State of Madras v. Champakam Dorairajan, AIR 1951 SC 226.

equally<sup>8</sup>.

Thus, for the purpose of aiding the socially and educationally backward classes of the citizens without violating the provisions of Article 15 and any other provision, Clause (4) under Article 15 was added.

Clause (4) also mentions Clause (2) of Article 29 which states that no citizen of India can be denied admission into any educational institution that is maintained by the State or receiving aid out of the funds of the State on the basis only of religion, caste, race, language, or any of the mentioned grounds.

Clause (4) of Article 15 does not stand as an exception but a special provision for the socially and educationally backward classes of the society. Provisions made for aiding them does not turn into discrimination under Clause (1) Article 15. Even though the term Backward Classes is not defined in the Constitution of India, Article 340 allows the President to appoint special commission for investigations of the conditions of socially and educationally backward classes.

In a case, *A. Periakaruppan v. State of Tamil Nadu*,<sup>9</sup> it was held by the Supreme Court that classifying socially and educationally backward classes on the basis of caste falls under Clause (4) Article 15. But the conditions of such class of people must change with some development as that is what the major reason is for providing reservation for such class of people.

In a case, *Balaji v. State of Mysore*,<sup>10</sup> the Mysore Government had issued an order stating reservation for students in medical and engineering colleges from backward classes, scheduled castes and scheduled tribes which totalled up to 68% leaving only 32% of reservation for students getting admission on merit. Students who have secured more marks than those of the reserved category failed to get the seat due to reservation.

The court held that, categorization of backward classes and more backward classes cannot be justified under Clause (4) of Article 15. The term backward class should include both socially and educationally backward and not only one of them. The Clause (4) of Article 15 does not talk about caste but class.

It was further held that reservation of 68% of seats in medical and engineering colleges would amount to fraud on the Constitution as Clause (4) of Article 15 does not allow exclusive provisions for backward classes. Therefore, reservation of seats cannot be more than 50%.

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<sup>8</sup> Jagwant Kaur v. State of Maharashtra, AIR 1952 Bom. 461.

<sup>9</sup> AIR 1971 SC 2303.

<sup>10</sup> AIR 1963 SC 649.

In another case,<sup>11</sup> Supreme Court held that caste of a person should not be the factor that decide that they are of a backward class. But if an entire caste is found out to be both socially as well as educationally backward, then that caste will fall under backward class. It is also further stated that if a particular backward class is progressing socially and educationally and reaches a point where it no longer requires special aid from the State, then the lists of backward classes will be accordingly revised.

In Kerala, a Commission was appointed for investigation for the purpose of classifying which set of class will fall under backward class. On the basis of the conclusions of the report, Government of Kerala stated that candidates belonging to families who income is more than Rs. 10,000 per month or above cannot be granted reservation in medical colleges. The Supreme Court held that caste alone or poverty alone cannot be sole determining factors of social backwardness, both must prevail.<sup>12</sup>

In one major case,<sup>13</sup> the Supreme Court ruled that providing reservation for students who are based on rural areas is unconstitutional and cannot come under Clause (4) of Article 15. The state of Uttar Pradesh provided reservation in Medical Colleges in the state for students from rural areas, hill region and Uttarakhand. Supreme Court held that reservation for students coming from hill region and Uttarakhand can be held valid because people from those areas are educationally and socially backward due to the lack of awareness and lack of facilities for educational purposes. Rural areas do not represent social and educational backwardness. Also, poverty in rural areas does not make them backward.

Reservation is meant for socially and educationally backward class of the citizens. If a person from a high caste marries one of a Scheduled Tribe does not grant the person of high caste a reservation of the basis that they are married to a person from a backward class. In this case, a girl from a high caste (Reddy) married a boy who belongs to a backward class (Erukala, a Scheduled Tribes). After the marriage, the girl had wanted to take admission in a college for an agriculture course under reservation category. The university denied the reservation and further the Court also held that the girl is not entitled to get the seat under reservation but on regular merit basis only.<sup>14</sup>

### **Clause 5:**

Clause (5) of Article 15 says that no clause of Article 15 and sub-clause (g) of Clause (1) of

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<sup>11</sup> State of AP v. USV Balaram, AIR 1972 SC 1875.

<sup>12</sup> K. S. Jayashree v. State of Kerela, AIR 1976 SC 2381.

<sup>13</sup> State of UP v. Pradeep Tandon, AIR 1975 SC 563.

<sup>14</sup> Dr. Neelima v. Dean of PG Studies AP Agriculture University, Hyderabad, AIR 1993 SC 229.

Article 19 can prevent the government from making special legal provisions for the improvement of socially and educationally backward classes of the citizens or for the Scheduled Castes/Scheduled Tribes. The special provisions might relate to the admission of the backward classes, SCs and STs in the educational institutions, be it private or government, aided or unaided by the State, except for the minorities that are mentioned under Clause (1) of Article 30.

As the Clause (5) of Article 15 mentions sub-clause (g) of Clause (1) Article 19 and Clause (1) of Article 30, it is essential to know what is provided under the mentioned articles of the Constitution of India.

Sub-clause (g) of Clause (1) of Article 19 says that all citizens of India have the right to practice any profession, trade, business, or occupation of their choice. Clause (1) of Article 30 says that all the minorities in India have the right to establish and administer educational institutions of their own choice, whether their minority is based on religion or language.

In a case,<sup>15</sup> the Supreme Court held that Clause (5) of Article 15 is not violative of Article 14 of the Constitution. Now what does Article 14 of the Constitution of India talks about? Article 14 is one of the most important right given to the citizens of India. Article 14 states that no citizen can be denied equality before the law or equality in protection within the territory of India.

Currently the reservations provided to Scheduled Castes is 15%, for Scheduled Tribes is 7.5% and for Other Backward Classes is 27%, this percentage prevails when the admission/recruitment is on an all-India basis by way of open competition. In case of admission/recruitment on all-India basis other than by open competition, the percentage of reservation is provided as 16.66% for Scheduled Castes, 7.5% for Scheduled Tribes and 25.84% for Other Backward Classes. Also, for the citizens under Economically Weaker Section, the reservation allotted is 10%.

In *Chebrolu Leela Prasad Rao v. State of Andhra Pradesh*, the Andhra Pradesh Government stated that 100% reservation is provided to Scheduled Tribes candidate for the post of government school teacher with 33.1/3% for women in the scheduled areas of the state. This was ruled as unconstitutional by a 5-bench judge of Supreme Court.

### **Clause 6:**

In 2019, by 103<sup>rd</sup> Constitutional Amendment Act, a new Clause (6) was added to Article 15 of

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<sup>15</sup> *Pramati Educational and Cultural Trust v. Union of India*, AIR 2014 SC 2114 at p. 2129.

the Constitution of India. This clause talks about Economically Weaker Sections of the citizens, they are those citizens who are determined as economically weak on the basis of the family income and other indicators of economic disadvantage.

Clause (6) states that no provision of Article 15, sub-clause (g) of Clause (1) of Article 19 and Clause (2) of Article 29 can prevent the State from making special provisions for the advancement of the economically weaker sections other than those classes as mentioned under Clause (4) and (5). The Clause (6) further states that special provisions for the economically weaker sections are provided in the educational institutions in the same way as stated under Clause (5) of Article 15.

### **III. ANALYSIS OF THE ARTICLE**

The Article 15 is a very broad one as it talks about no discrimination on the basis of religion, race, caste, gender, place of birth or any of them. Discrimination is a huge term and people have faced discrimination of multiple forms since ages. For the protection of rights equally, providing equal opportunities to the citizens is what the article aims at. Development and advancement of the socially, economically, and educationally backward classes is the major objective of Article 15.

The major disputes that arise due to the existence of Article 15 is about the reservation. Ages have passed and multiple forms of reservation are provided to the weaker sections of the society that causes distress to the general category. The agenda of reservation is not to divide the population into general category and reserved category, but to uplift the disadvantaged population of the citizens.

Untouchability and discrimination were very high in the early centuries before the British colonial rule, it did exist even during the colonial era and after that. But the introduction of laws for the protection of the disadvantaged class has reduced the discrimination up to some extent. It cannot be said that discrimination has been completely removed but it is reducing.

The preamble of the Constitution of India includes the term Equality in it. Article 15 focusses on implementation of the term widely throughout the territory of India. Discriminating someone based on their skin color, gender identity, place of birth, their religious beliefs cannot be accepted, especially in a democratic nation. With the evolution of the human kind, advancements of nations, dynamic acceptance of the society, implementation of Article 15 becomes easier.

Not to mention the decriminalization of Section 377 of the Indian Penal Code that gave

recognition to the people of the LGBTQ+ community, accepting all genders as equal and not restricting genders to be only male and female. People of the LGBTQ+ community have been struggling for ages for their recognition. Even after recognition, many people from the community still suffer with discrimination, still it is difficult for them, even though there are many notably successful ones from the community. Thus, it takes time, acceptance of the society as a whole, and also for the law to recognize and help the disadvantaged sections of the citizens.

Women have faced uncountable discrimination over the years. There were times when women were not even allowed to enter into sports profession, there were few professions and job occupations that explicitly denied entry of women. Ages have now far gone where women are only treated as child bearers. Equal recognition, opportunities and laws have been made and provided for the protection of rights of women. Maternal benefits in organizations, reservation in educational institutions and other government and private jobs are some of the examples for the implementation of equality.

Discrimination based on skin color, and place of birth have also prevailed, even though there have not been any case laws. Discriminating dark skinned people and terming few communities as untouchables were prevailing earlier before proper laws were drafted for the equal recognition of rights of the people. Linguistic discrimination falls under the category of place of birth. Racism is the right term for discrimination based on skin color. It is not highly existing in India now, but outside the country Indians are victims of racism, the first example is of the father of our nation Mohandas Karamchand Gandhi, who was thrashed out of the train in Durban. Many Indians face racism outside the country till date and the need for the provision of the protection of such rights is required.

In the case of the socially, economically, and educationally backward classes of the society, Article 15 protects them. Reservation in educational institutions and other government and private job is a major way of protection of their rights and upliftment of their social condition. Over the years, there have been many cases with regard to conflicts on various provisions introduced for reservation.

The major purpose of reservation for socially, economically, and educationally backward classes is to uplift their condition, make them equal in all terms with the general class and provide them with equal opportunities. Reservation is not discriminative or violative of Article 14 of the Constitution of India. In fact, it is a provision to reach and fulfill the objective of Article 14 and 15.

Providing relaxation on the minimum qualifying marks for the admission of students from Scheduled Castes and Scheduled Tribes was done by the Government of Maharashtra in an Executive Order for pre-medical examination for selecting students for admission into medical colleges of the State. There was a reservation of 15% each for Scheduled Castes as well as Scheduled Tribes out of 720 seats which amounts to 108 seats for each. The required qualifying marks for Scheduled Castes was allowed at 40% and for Scheduled Tribes at 30% when the general qualifying marks was 50% in total and 33% for individual subjects. Still many students from Scheduled Castes and Scheduled Tribes could not get admission as they did not obtain the required qualifying marks and many seats were left unfilled. Therefore, in response to this the order was revised and the reservations were relaxed and even after that many students were not able to qualify. The Government completely relaxed the qualifying marks, but the High Court struck down the decision stating it to be violative of Clause (4) of Article 15. It was further held by the Supreme Court that the Regulation II of the MCI (Medical Council of India) with respect to the qualifying marks was a direction and not mandatory and thus it cannot be held violative of Clause (4) of Article 15. It is the duty of the State to frame provisions for the upliftment and advancements of the socially, economically, and educationally backward population of the citizens.<sup>16</sup>

For super speciality courses in medical and engineering colleges, it was challenged to make the admission process completely on merit basis. The petitioners challenged the Uttar Pradesh Post Graduate Medical Education (Reservation for Scheduled Castes, Scheduled Tribes and Other Backward Classes) Act and the Executive order of the Madhya Pradesh Government that made provisions for lowering the minimum qualifying marks for the reserved category students. The Supreme Court held both the Act and order as unconstitutional for super speciality courses in a five-judge bench that comprised of Chief Justice A.S. Anand, Justice S.B. Mazumdar, Justice Sujata B. Manohar, Justice Venkataswami, and Justice V.N. Khare. It was held that merit alone can be the best criteria for selection of candidates for admission into super speciality courses in medical as well as technical courses. It was stated that during the admission, the students who are from the general category do not get any such special provision and are selected solely based on merit. It was further stated that the major objective behind the provision of Clause (4) of Article 15 is to uplift and advance the weaker sections of the citizens and make them equal to the other sections. But for such purpose ignoring the wider interests of the society cannot be done.<sup>17</sup>

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<sup>16</sup> State of MP v. Nivedita Jain, AIR 1981 SC 2045.

<sup>17</sup> Dr. Preeti Sagar Srivastava v. State of Madhya Pradesh, AIR 1999 SC 2894.

In a case, *Narayan Sharma v. Pankaj Kr. Lekhar*,<sup>18</sup> the validity of few rules of the Assam Medical Colleges Regulation of the Admission to the Post Graduate Courses Rules, 1997 were challenged. The rules were number 4, 5, and 8. Rule number 4 talks about reservation of total four seats as per the recommendations of the North Eastern Council, reservation of total six seats for the teachers quota for the teachers who had been appointed on the regular basis and have worked for 3 years in State Medical Colleges and the next was reservation of total twenty seats for the doctors who were appointed in the State Health Services and have provided service for at least a period of five years. Rule number 5 stated that students who fall under the category as mentioned under the rule number 4 are not required to appear for the Entrance Examinations. The respondents challenged that the rules were arbitrary and unconstitutional and there should be equal Entrance Examination for all students aiming for post graduate. The Supreme Court held that rule number 4 (ii) and (iii) were valid which talks about the teacher's quota, but rule number 4 (iv) and rule number 5 is unconstitutional and cannot be held as a valid ground for admission.

Reservation for the protection of socially backward sections of the society is a fantastic approach but has received a lot of criticism over the years by the general category as it affects their admission and cut offs in National and other state level examinations. But it is important to comprehend that such provisions are made to protect the rights of the backward classes and to safeguard them from discrimination on multiple grounds. Advancement of weaker sections will automatically quash the reservation system.

Racism is another major issue in India, especially the citizens from the seven sisters (north-eastern part of India) face a lot of racism. Even though there is no specific law or regulation for protection of people from racism other than Article 15 of the Constitution of India, the need for bringing in more laws is required.

Even though the Government of India did take initiative in 2015 by passing a bill before the Delhi High Court to insert new sections 153C and 509A in the Indian Penal Code for the protection of people from racism, there has not been a positive response yet. There is a dire need to insert these new sections for criminalization of racial offences in India and for penalizing the offenders of racism.

The Law Commission of India did propose an imprisonment up to two years along with a fine of Rs. 5,000 on anyone who abuses any other person on the grounds of their origin, region, or place of birth. The proposals are still under considerations and the commission is waiting for

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<sup>18</sup> AIR 2000 SC 72.

the expected response.

Racial discrimination is required to be criminalized so as to protect the interests of every citizen, not only the citizens from the north-eastern states but even other parts of the country like the southern part are discriminated based on their region, origin, and place of birth. Even outside India, the citizens face racial discrimination. Victims of racism are not compensated properly enough mainly due to lack of proper legislation and more requirement of stricter laws.

Protection of the rights of women is also provided under Article 15. Women need the recognition of getting equal opportunities. Clause (3) of Article 15 allows the creation of special provisions for women and children. Many cases of adultery were ruled by the Courts in favour of women to protect their future ability to sustain themselves. Criticism exists that women are not punished under Section 497 of the Indian Penal Code for adultery, and this is one section that does require amendment when the idea of equality exists in India.

#### **IV. CONCLUSION**

Discrimination is a very wider term and people have faced and struggled because of it. One cannot conclude that with the existence of laws discrimination has come to an end, it still prevails in many parts of the country. Be it people getting abused verbally or physically or with other means of not allowing access, discrimination based on gender, place of birth and caste are still existing in India.

For the protection of the people many provisions as explained elaborately in this paper are made such as reservation, special provisions for children and women, etc. Case laws based on protection on women, reservation for Scheduled Castes, Scheduled Tribes, Other Backward Classes, and Economically Backward Classes have taken place and various High Courts and the Supreme Court have in most cases given favourable and convincing judgments. There are many laws that are challenged as being violative of other legal provisions such as validity of Clause (4) of Article 15 has taken place multiple times. Other clauses of Article 15 have also been challenged for being contradicting and violative of Article 14 that talks about equality to every citizen.

Many states made changes in the admission process into educational institutions especially medical and technical colleges for the purpose of reservation. Many such related orders faced criticism, but the High Courts and Supreme Court have given detailed judgments in accepting the reservation and in few cases rejecting the reservation if they were more than the acceptable criteria of 50%. The sole purpose of reservation being upliftment and advancement of the backward sections.

The major drawback is, the provisions of Article 15, do mention about discrimination based on gender, race, and place of birth, but focus too much on the protection of the backward sections of the society. The need for provisions that protect the citizens from racism and discrimination based on gender (not only women but also people from the LGBTQ+ community), and on the basis of place of birth. Initiatives for criminalization of racism are under process and review and the Law Commission of India waits for a positive response. Abiding by the regulations automatically will protect the rights of the citizens.

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