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# Constitutional Right to Equality in Public Service Employment

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## ABSTRACT

*With the advent of the M. Nagaraj Case (2006) supreme court specifically held that in order to reservation in promotion with consequential seniority for the Schedule Castes (SCs) and Schedule Tribes (STs) under Article 16(4A) and Article 16 (4B) of the Indian Constitution must be relied upon the collection of the quantifiable data clearly reflecting the backwardness and inadequacy of representation for the same in public employment and also obliterate the creamy layer of SCs and STs from reservation became a norm for the selection or appointment of any public employment. This only meant to provide an equality amongst the candidate actually backward to be benefitted so that their representation in public service should be ensured. Though this case widely left open as to what test be followed for determining adequacy of representation in promotional posts for e.g., if it proportionality test taken into account thus it will reduce number of SCs and STs in promotional posts will affect the efficiency of administration. The aim of this research paper is give an overview on the right to equality and equality in public service and with the help of judicial decision tried to establish the so far development in the field of socially educationally backward class and the constitutionality would be checked with the help of judicial precedents.*

**Keywords:** Reservation, Equality, Backwardness, Indian Constitution, Public Employment, Appointment.

## I. INTRODUCTION

The concept of the Right of Equality is envisaged from the Arts 14 to 18 of the Indian Constitution guarantee the right to equality to every citizen of India. Art. 14 provides the general principles of equality before the law and prohibits unreasonable discrimination between persons.

Art. 14 contains the idea of equality expressed in the Preamble. The succeeding Arts. 15, 16, 17 and 18 lay down specific application of the general rules laid down in Art. 14 and Art. 15 relates to prohibition of discrimination on the grounds of religion, race, caste, sex or place of

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birth. Art. 16 guarantees equality of opportunity in matters of public employment. Art. 17 abolishes Untouchability. Art, 18 abolishes the foreign title.

## **II. ARTICLE 14 - CONCEPT OF RIGHT TO EQUALITY**

The Article 14 of the Indian Constitution declares that 'the State shall not deny to any person equality before the law or the equal protection or the laws with in the territory or India.' Thus, Art. 14 uses two expressions "equality before the law" and "equal protection of the laws." The first expression 'equality before law' is of English origin and the second expression has been taken from the American Constitution.

Both these expressions aim at establishing the "equality of status" as established in the Preamble of the Constitution. While both the expressions may seem to be identical, they do not convey the same meaning. 'Equality before the law' is a somewhat negative concept implying the absence of any special privilege in favour of individuals and the equal subject of all classes to the ordinary law. "Equal protection of the law" is a more positive concept implying equality of treatment in equal circumstances.

However, one dominant idea common to both the expression is that, of equal justice. In *State of West Bengal v. Anwar Ali Sarkar*<sup>2</sup>, Patanjali Sastri, C.J., has rightly observed that the second expression is corollary of the first and it is difficult to imagine a situation in which the violation of the equal protection of laws will not be the violation of the equality before law. Thus, in substance the two expressions mean one and the same thing which are as:-

**(I) Equality Before Law-** The concept of equality does not mean absolute equality among humans, which cannot be achieved physically. It is a conception of the absence of any special privilege on the grounds of birth, religion or the like in favor of any individual, and to the ordinary law of the land is the equivalent subject for individuals and classes.

Dr. Jennings says that "equality before the law" means that the law must be equitable and equitably administered in equal measure, that is, alike should be treated equally as alike. The right to sue, to be sued, to prosecute and to be prosecuted, for the same action must be the same for all citizens of full age and understanding, regardless of differences in race, religion, wealth, social status or political influence.

**Rule of Law<sup>3</sup>:** An element of what Dicey calls the "rule of law" in England is the rule of law which guarantees "equality before the law." This means that no one is above the law, and that

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<sup>2</sup> (1952) SCR 284.

<sup>3</sup> D. D. Basu and S. P. Sengupta, *Administrative Law* 15 (Kamal Law house, 7<sup>th</sup> edn., 2019).

any citizen, whatever his rank or circumstances, is subject to ordinary court jurisdiction.

Dicey wrote "Any Prime Minister official down to constable or tax collector is under the same responsibility as every other person for any act committed without legal excuse." Under the rule of law, no citizen shall be subjected to cruel, uncivilized or unjust treatment, even when the object is to protect the supreme requirements of law and order.

According to Dicey the "Rule of Law" has three distinct meaning which are as -

The first one of rule of law according to Dicey is the absence of arbitrary power in other words the Supremacy of the Law as opposed to the Government's unconstitutional authority. It follows from this that no man is liable for a distinct violation of law formed in the usual legal manner before the Land's ordinary courts. So the person may be punished for an infringement of the law, and may be punished for nothing else.<sup>4</sup>

According to Dicey, the second term of the rule of law is Justice of all persons in the eye of law which implied the equitable subjection of all persons to the "ordinary law of the country governed by ordinary courts." That means no one is above rules except the sovereign who can do no wrong. Everyone in the England, whether he is an official of the State or a private individual, is bound to obey the same law.

The Third expression of the rule of law according to dicey is the Constitution is the result of the ordinary law of the land. It implies that the source of the right of individuals is not the written constitution but the rules as defined and enforced by the courts.

The third element of the rule of law of the Dicey does not extend to the Indian system, as the Indian Constitution is the basis of human freedom. The Constitution is the supreme law of the land and therefore all laws passed by the legislature must comply with the constitutional provisions.

**(II) Equal protection of the Laws-** It means that all persons similarly circumstanced shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. As regards the subject-matter of the legislation their position is the same. Thus it has bene quoted many times that the rule is that the like should be treated alike and not that unlike should be treated alike.<sup>5</sup>

The rule of law places on the State a obligation to take specific steps to deter and punish

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<sup>4</sup> Ibid.

<sup>5</sup> D. D. Basu, Introduction to the Constitution of India 95 ( Lexis Nexis, 21<sup>st</sup> edn.,2013).

violence by means of policing operations. The rule of law found in Article 14 is the "primary aspect" of the Indian Constitution and thus can not even be violated by a constitutional amendment under Art. 368 of the Constitution.

The words "any person" in Article 14 of the Constitution refer to the guarantee of equal protection of laws by any person, including any organization or association or organization of individuals. The protection of Section 14 extends to citizens and non-citizens as well as to natural persons and legal persons. Equality before the law is guaranteed for all, regardless of race, color or nationality. Companies that are judicial persons are also entitled to the benefit of Article 14 of the Constitution of India.<sup>6</sup>

#### **Article 14 permits Reasonable classification but prohibits class legislation-**

The equal protection of the laws enshrined in Art. 14 does not mean that all rules must be of a general nature. This does not mean that all people will be subject to the same rules. It does not mean that every law must have universal application for, all persons are not, by nature, attainment or circumstances in the same position. The varying needs of different classes of persons often require separate treatment. From the very nature of society there should be different laws in different places and the Legislature controls the policy and enacts laws in the best interest of the safety and security of the State. In addition, similar treatment will lead to discrimination in unequal circumstances. So, a reasonable classification is necessary if society is to progress.

### **III. TEST OF REASONABLE CLASSIFICATION**

Article 14 of the Indian Constitution forbids class law, does not preclude fair classification by the legislative of persons, objects and transactions for the purpose of achieving particular ends. But classification must not be "arbitrary, artificial or evasive." It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature.

**Two Conditions-** Classification to be reasonable must fulfil the :-

- (i) 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 differentia which is the basis of the classification and the object of the Act are two distinct things.

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<sup>6</sup> Id. at 90.

- (ii) the differentia must have a rational relation to the object sought to be achieved by the Act. The differentia which is the basis of these classifications must have two distinct that's is the , first one , what is necessary is that there must be a nexus between the basis of classification and the , second one, object of the Act which makes the classification.<sup>7</sup>

It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory. Thus, the Legislature may fix the age at which persons shall be deemed competent to contract between themselves but no one will claim that competency. No contract can be made to depend upon the status or colour of the hair Such a classification will be arbitrary.

#### **IV. BASIS OF CLASSIFICATION**

The constitutionality of every statute depends on whether there is a basis for the classification made in the statute. The basis of classification may be different e.g. geographical, vocational, difference in time, difference in nature of persons, trade and callings or occupation, etc.

The propositions laid down in **Shri Ram Krishna Dalmia vs. Justice S. R. Tendolkar**<sup>8</sup> still holds good governing a valid classification which are as follows :-

- (i) 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 itself.
- (ii) There is always presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of constitutional principles.
- (iii) The presumption may be rebutted in certain cases by showing that on the fact of the statute, there is no classification at all and no difference peculiar to any individual or class and not applicable to any other individual or class, and yet the law hits only a particular individual or class.
- (iv) This is the presumption that the Legislature ought be understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations are based on adequate grounds.
- (v) In order to sustain the presumption of constitutionality the court may take into consideration

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<sup>7</sup> P. M. Bakshi, *The Constitution of India* 25 ( Universal Law Publishing, 12<sup>th</sup> edn., 2014)

<sup>8</sup> 1959 SCR 279.

matters of common knowledge, matters of report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation.

(vi) That the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest.

(vii) The classification may be made, on different basis, e.g., geographical or according to objects or occupations or the like.

(viii) The classification made by a legislature need not be scientifically perfect or logically complete. Mathematical nicety and perfect equality are not required.

(ix) There can be discrimination both in the substantive as well as the procedural law. Art. 14 applies to both. If the classification satisfies the test laid down in the above propositions, the law will be declared constitutional. The question whether a classification is reasonable, and proper or not, must, however, be judged more on common sense than on legal premises.

## **V. WHETHER A SINGLE PERSON CONSTITUTE ITSELF A CLASS**

In **Chiranjit Lal v. Union of India**<sup>9</sup> owing to mismanagement in Sholapur Spinning and Weaving Company Ltd. the management threatened to close down the Mill. The Parliament passed the Sholapur Spinning and Weaving Co. Act empowering the Government to take over the control and management of the company and its properties by appointing their own directors. The Act was challenged by a shareholder of the company on the ground that a single company and its shareholder was being denied equality before the law, because the Act treated him differently vis-a-vis other companies and their class - shareholders.

The Supreme Court held that a law may be constitutional even though it applies 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 itself, unless it is shown that there are others who are similarly circumstanced. The presumption is always in the favour of the enactment and the burden is on the petitioner who attacks the validity of the legislation to place all materials before the Court which would show that the selection is arbitrary and unreasonable. The Legislature is free to recognise the degree of harm and it may confine its restrictions to those cases where the need is deemed to be the clearest. In the present case the Sholapur Company formed a class by itself because the mismanagement of the Company's affairs prejudicially affected the production of an essential commodity and had caused a serious unemployment amongst labours.

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<sup>9</sup> 1950 SCR 869.

In Another case it was held that the picking of someone out of the entire Cabinet for the purpose of enquiry was not discriminatory or violative of Art 14. The notification under S. 3 of Jammu and Kashmir Inquiry Act of 1962 whereby an Enquiry Commission was appointed to go into the charges of corruption could not be called bad as if its violating "equality before law". It was held that Bakhshi Ghulam Mohammad formed a class by himself and there was no question of violation of Article 14 of the Indian Constitution.<sup>10</sup>

In **Anmeerunnisa Begum v. Mahmood**<sup>11</sup> on the death of the Nawab of Hyderabad dispute between two rival parties regarding succession to his property arose which resulted in protracted litigation. In order to put an end to this long-standing litigation the Hyderabad Legislature passed the Wal-ud-Dowla Succession Act, 1950.

By this Act one party's arguments were rejected, i.e. two ladies and the land was adjudicated to the other party. The Act was questioned on the basis that it robbed petitioners of the ability to pursue their cases in a court of law and, thus, discriminated against the majority of the society in respect of a precious privilege that the statute grants to all. The Government justified the classification mainly on the ground that the Act was passed to put an end to a long standing litigation. The Supreme Court held the Act unconstitutional on the ground that it did not furnish any reasonable basis for the discrimination made by it.

## **VI. EXCEPTION TO THE EQUALITY BEFORE THE LAW**

The Article 361 of the Indian Constitution permits the following exceptions of this rule, which are as -

- (i) The President or Governor of a State shall not be responsible to any court for the conduct or execution of the powers and duties of his or her office or for any act or action which he or she may be perform in the exercise of the powers and duties.
- (ii) No criminal proceedings shall be instituted or pursued in any court against the President or the Governor during his term of office.<sup>12</sup>

Whether any civil action seeking relief against the President or the Governor of a State in any State shall not be made in any court during his or her personal capacity? The case may be, either before or after he is sworn in as president or governor of such state, until the next two months expire and the written notice is given to the president or governor.

The above mentioned immunities, however, shall not bar the Impeachment proceedings against

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<sup>10</sup> J. & K. State v. Bakhshi Ghulam Mohd. 1966 SCR (4) 1.

<sup>11</sup> 1953 SCR 404.

<sup>12</sup> Article 361 of the Constitution of India.

the President; Suit or other appropriate proceedings against the Government of India or the Government of a State.<sup>13</sup>

Besides the above constitutional exceptions, there will, of course, remain the exceptions acknowledged by the comity of nations in every civilized country, e.g., in favour of foreign Sovereigns and ambassadors.

## **VII. ARBITRARINESS AND EQUALITY ARE SWORN ENEMIES**

It was held in the Maneka Gandhi case that If the state action is arbitrary, it would be violative of Article 14 and hence it cannot be protected on the basis of the reasonable classification. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits.<sup>14</sup>

Another case of, **E.P. Royappa v. State of Tamil Nadu**<sup>15</sup>, the Supreme Court has made very clear that In a positive perspective, equality goes against arbitrariness. However, liberty and arbitrariness are sworn rivals, one is part of the republic's rule of law; the other is an arbitrary king's will and caprice. According to legal theory and procedural law, if an act is unconstitutional, it is unjust, thereby breaching Article 14.

Thus with the E. P. Royappa Case laid down the new test for equality against arbitrariness has been setup whereas under if an act is arbitrary it is unequal in the eyes of both according to political logic and Constitutional Law and hence violative the provisions of Article 14 of the Indian Constitution. That is why it , rightly remarked as, called equality is the antithesis of arbitrariness.

In **M. Nagraj v. Union of India**<sup>16</sup>, The Constitutional Bench of the Supreme Court has stated in no uncertain terms that equality is a fundamental feature of the Constitution and that, although the emphasis has been extended conceptually and has recognized the principles for understanding the doctrine of promissory estoppel non arbitrariness, compliance with the rules of natural justice avoiding irrationality, etc.

## **VIII. ARTICLE 15**

The Article 15 of the Indian Constitution is a particular aspect of equality guaranteed by Article 14 and confers the right against being subjected to discrimination in matters of right, privileges and immunities pertaining to him as a citizen generally. Thus, Article 15 forbids discrimination.

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<sup>13</sup> Article 361A of the Indian Constitution.

<sup>14</sup> Maneka Gandhi v. Union of India, 1978 SCR (2) 621.

<sup>15</sup> 1974 SCR (2) 348.

<sup>16</sup> Writ Petition (civil) 61 of 2002.

It runs as follows:

Article 15 comprises two main components: the first component is the 'right against discrimination in public places' and the second component is the 'Positive discrimination against weaker segments of society'.<sup>17</sup>

Positive discrimination is the method or strategy of promoting people belonging to communities who have been discriminated against-ever since ancient India.

Clause (1) points out the conditions prohibited in any case over which the State has exclusive power.

Clause (2) sets out the grounds forbidden in any matter in which the State and even private individuals have sole control.

Clause (3) calls for special arrangements for the protection of women and children by the State.

Discrimination 'just' on any of the grounds specified above is invalid. However, prejudice may exist on all of the above grounds, and is also considered legitimate for certain purposes not stated above. Public place includes a public park, public highway, public bus, ferry, public urinals, railroad, hospital, etc.

In Clause (3), laws should be made 'for' women, and not 'against' women. Furthermore, provisions for women and children are valid while provisions for men and boys are unconstitutional.

Clause (4) is an enabling clause which confers discretion on the use of such clauses on the Policy. They are not necessarily mandatory for the State to take steps under them.

Any law discriminating on one or more of these grounds would be void. The 'word' only has been purposely used in the Article. A discrimination based on one or more of these grounds and also on other ground or grounds will not be affected by Article 15(1).<sup>18</sup>

This implies that if one or more of the specified grounds is combined with a ground not mentioned in Article 15(1) the laws will be outside the prohibition contained in Article 15(1). Article 15(1) prohibits discrimination on the ground of birth and not that of residence. A State can, therefore, grant concessions to its residents in the matter of fees in an educational institution.

**In D. P. Joshi v. State of Madhya Bharat**<sup>19</sup>, the briefs facts of the case are that

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<sup>17</sup> Article 15 of the Constitution of India.

<sup>18</sup> Dattatraya Motiram More v. State of Bombay, (1953) 55 BOMLR 323.

<sup>19</sup> 1955 SCR (1)1215.

“ A rule of medical college provided that from all students who are bona fide residents of Madhya Bharat no capitation fee should be charged, but for other non-Madhya Bharat students the capitation fee should be retained as at present of Rs. 1,300 for nominees and at Rs. 1,500 for others.”

The validity of this rule was challenged on the ground that it contravened Article 14 and 15(1) of the Indian Constitution. It was held, the rule is clearly not open to attack as infringing Article 15(1). The ground for exemption from payment of capitation is bona fide residence in the state of Madhya Pradesh.

Residence and place of birth are two distinct conception with different connotation both in law and in fact and when Article 15(1) prohibits discrimination based on the place of birth, it cannot be read as prohibiting discrimination based on residence. Thus the Article 15(2) applies to State as well as to private actions while Article 15(1) refers to the obligation of the State only.

## **IX. SPECIAL PROVISIONS FOR WOMEN AND CHILDREN AND FOR ADVANCEMENT OF BACKWARD CLASSES CLAUSES (3) AND (4) OF ARTICLE 15 OF THE INDIAN CONSTITUTION**

Clause (3) and clause (4) of the Article 15 embody exception to the general rule laid down in clauses (1) and (2). Whereas The Clause (3) of the said article empowers the State to make special provisions for women and children. Clause (4) empowers the state to make special provisions for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. Though there is nothing in Articles 15(3) and (4) to qualify the special provisions which the State can make, yet the general prohibition made by Article 14 will apply to such cases and the special provision which the State makes should not be arbitrary or unreasonable.<sup>20</sup>

In **M. R. Balaji v. State of Mysore**<sup>21</sup>, The brief facts of the case are that the On July 26, 1958, Mysore issued a decree that all communities except the Brahmin community should fall within the Education and Social Backward Classes and Scheduled Castes and Scheduled Tribes and 75% Places in educational institutions were reserved for them. Similar orders for booking seats were issued on May 14, 1959, June 9, 1960 and July 10, 196. The percentage of inverted locations varied across different orders, but not all of them. Set aside during the challenge. On July 31, 1962, the State of Mysore passed another order which violated all previous orders

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<sup>20</sup> N. Vasundarav. State of Mysore, 1971 AIR (SC) 1439.

<sup>21</sup> 1962 SCR Supl. (1) 439.

made by the State under Art. 15 (4) to allocate seats. Under that order, the backward classes were divided into two categories as backward classes and backward classes. The government reserved seats in the Medical and Engineering Colleges in the State were as follows : Backward classes 28%; More backward classes 22%; Scheduled Castes and Scheduled Tribes 18%. This directive addresses 68% of scouts in engineering and medical colleges and other technical institutes as educational and socially disadvantaged classes and castes and lists Aboriginal, and left only 32 percent of the eligible pool.<sup>22</sup>

Wherein the newly inserted Article 15(4) was examined by the Supreme Court. Under challenge here was a governmental order issued by the State of Mysore, wherein backward classes were identified exclusively on the basis of caste. The five-judge bench of the Supreme Court struck down this classification for several reasons – the chief of which is the Court's interpretation of the words in Article 15(4) as being "classes of citizens", not as "castes of citizens". The test of caste was rejected for some other reasons as well – first, caste is inapplicable in many sections of Indian society which do not recognize the caste system such as Muslims or Christians; and second, the use of caste may be inappropriate if the end-goal is to eradicate caste itself.

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). The caste of a person cannot be sole test for ascertaining whether a particular class is backward class or not; Reservation of 68% seats is inconsistent with Art. 15 (4) and it may amount to fraud upon the Constitution: Article 15(4) only enables the State to make special and not exclusive provision for the backward classes.

In the Mandal Commission case the Supreme Court held that sub-classification of backward classes into more backward and backward classes for the purpose of Article 16(4) can be done provided as a result of the sub- classification the reservation cannot exceed more than 50 percent. Thus, the Court has overruled Balaji case on this point.<sup>23</sup>

## **X. EQUALITY OF OPPORTUNITY IN MATTER OF PUBLIC EMPLOYMENT**

The main concerned in regard of the whether the state can discriminate between the citizens of India employment or appointment to the public office.

The Article 16 of the Indian Constitution is an extension of the equality principle of Article 14 in matters of appointment and employment of citizens to any post under the State and prohibits

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<sup>22</sup> Available at Indian Kanoon - <http://indiankanoon.org/doc/599701/> (last Retrieved on 02/07/2020).

<sup>23</sup> *Indra Sawhney v. Union of India* (1992) Supp. (3) SCC 217.

the discrimination in the matter on the grounds only of religion, race, caste descent, place of birth, residence or any of them. The Clauses (3) to (5) of Article 16 provides an exceptions to the equality principles in favour of the backward classes of people, S.C.'s and S. T.'s, incumbents of religious institutions and residents of certain places.

The Article 16 of the Indian Constitution provides that :-

1. Equal rights for all people in matters relating to jobs or election to any office within the State shall be given.<sup>24</sup>
2. No person shall be ineligible for, or discriminated against, any job or position within the State on the grounds of religion, race, caste, age, descent , place of birth, residency or any one of them.<sup>25</sup>
3. Nothing in this Article shall prevent Parliament from making any law requiring residence within that State or territory of the Union before such employment or appointment in respect of a class or class of employment or appointment to an office under the Government or of any local or other authority within that State or territory.<sup>26</sup>
4. Nothing in this Article shall prevent the State from making provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the State 's opinion, are not adequately represented in the services provided by the State.<sup>27</sup>
5. Nothing in this Article shall affect the operation of any law which provides that a person professing a specific religion or belonging to a particular denomination is the incumbent of an office in connection with the affairs of any religious or denominational entity or of any member of its governing body.<sup>28</sup>

Under this article, Only three kinds of departures are permissible :

- (1) Residential preference,
- (2) Reservation of posts for certain communities of backward classes under certain circumstances,
- (3) Offices connected with the managements of religious or denominational institutions being reserved only for members professing the faith connected with such institutions.

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<sup>24</sup> Article 16(1) of the Indian Constitution.

<sup>25</sup> Article 16(2), Ibid.

<sup>26</sup> Article 16(3), Ibid.

<sup>27</sup> Article 16(4), Ibid.

<sup>28</sup> Article 16(5), Ibid.

Articles 14 and 16 Prohibition of hostile discrimination. They do not prohibit reasonable classification and equal opportunity in promotion matters implies parity between the same class of members of employees and therefore no parity between members of separate and independent classes.

The Article 16(1) is a facet of Article 14 of the Indian constitution. The Articles 14 and 16(1) are closely interconnected Article 16 (1) and thus has its origin from the Article 14. Article 16 (1) particularizes the generality of Article 14 identifies, in a constitutional and sense, "equality of opportunity" in matter of employment under the State. The observance of the Equality Rules in Public Employment is one of the features of our Constitution, and in its maintenance the rule of law cannot prevent the Court from granting an order contrary to Articles 14 and 16 of the Constitution.<sup>29</sup>

Public employment is a facet of the right to equality provided for in Article 16 of the Indian Constitution. The State is a model employer, but its authority to establish and serve the people derives from the laws or legislation and regulations laid down in Article 309 of the Indian Constitution. The recruitment rules are designed to provide equal opportunity for all Indian citizens to be considered for recruitment in vacant posts.

**In Secretary, State of Karnataka v. Uma Devi**<sup>30</sup>, the brief facts of the case are that the The clause relates to the approaching High Court order to mandate that the right of employees to be appointed by the state on a temporary basis or on a daily basis or on a regular basis, if any, should be made permanent. In relevant posts, work that they were otherwise doing. On the basis of this claim they have been continuously employed or have been employed for a period of time and have the right to be entrusted with positions or relevant authority in the relevant field.

The respondents engaged in its daily wages in some districts of department of the Commercial Tax Department of the state of Karnataka. He has worked in the field for more than 10 years based on such involvement, so they claimed the right to be made the permanent staff of the department qualified for all the privileges of regular employees. They For the first time in 1985-86 and on the teeth of the order that such appointments should not be made. On 3.7.1984. Although the Director of Business Tax recommends them to be in. government not complying with that recommendation. These respondents approached the Administrative Tribunal in the year 1997 for the regularisation. The Administrative Tribunal rejected the finding that they

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<sup>29</sup> Reserve Bank of India v. Gopinath Sharma AIR 2006 SC 2614.

<sup>30</sup> AIR 2006 SC 1806.

were not others who work regularly have the right to receive or regulate wages equal to their wages. Thus, The Filing applications were dismissed. The respondents approached the Karnataka High Court decision of the Administrative Tribunal. The High Court really does not agreed with the findings and conclusions of the tribunal, hence This Court passed the order that they be entitled to equal wages for their existing salaries and allowances. From the date on which they are made to the regular employees of their work in government service were appointed respectively. It may be noted that this had a reverse effect on the judgment of the superior Court for more than 12 years. The High Court issued an order to the state to consider their cases regulation within a period of four months from the date of receipt of the order.<sup>31</sup>

In addition to the equality clause represented by Article 14 of the Constitution, Article 16 is particularly relevant Provides for equality of opportunity in public employment matters. Reducing these fundamental rights, Subject to the provisions of the Section 309 Constitution, the Legislature of the Legislature may regulate In this regard, recruitment and terms of service of persons appointed to public services and posts of the affairs of the Union or of a State. In view of the interpretation laid down in Article 12 of the Constitution by this Court, these principles govern the apparatus within the purview of Article 12 of the Constitution. In order to justify the procedure for selection, Article 315 of the Constitution has also created the Public Service Commission for the Union of States and the Public Service Commission. Section 320 deals with the functions of the Public Service Commission and shall consult with the Commission on all matters relating to recruitment methods and civil positions and other related matters for civil services. As part of the affirmative action approved by Article 16 of the Constitution, Article 335 gives special attention to the claims of Scheduled Castes and Scheduled Tribes for employment. States have made laws, rules or regulations to enforce the above constitutional guarantees, and the recruitment of any service in the State or the Union is governed by such laws, rules and regulations. The Constitution does not seek any employment outside of this constitutional scheme and in compliance with the requirements laid down therein.<sup>32</sup>

What is sought against this approach is the persistence of such persons in the employment of temporary employment or equity arising from their involvement in daily wages and for a period of time. While every qualified citizen has the right to apply for appointment, such considerations can only have a particular role in the acceptance of the rule of law and the constitution's plan for the appointment of positions. It cannot be forgotten that it is not the role

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<sup>31</sup> Available at Indian Kanoon - <http://indiankanoon.org/doc/1591733/> (Last Retrieved on 02.07.2020)

<sup>32</sup> Id. at 2.

of the courts to boycott, promote or endorse appointments or engagements made outside the constitutional scheme. As a result, directives based on such sentiments or attitudes can lead to the perpetuation of illegalities and the overturning of the public employment program adopted by us when the Constitution is adopted.<sup>33</sup>

The neglect of the constitutional scheme cannot be sustained by the enactment of orders without dealing with and determining the validity of such directives in the touchstone of the Constitution. As we approach our concluding questions, it is necessary to bring this to mind and to establish determination in the matter of public employment. The contention on behalf of some of the respondents is that this Court has once and for all directed the formalization of the Dharwad case, so that all appointments made at the same time are entitled to be formalized, otherwise all appointments made on a day-to-day basis on a temporary, contractual basis. Adopting this argument means more appointments than usual the electoral process would completely derail the constitutional nomination scheme.<sup>34</sup>

The Supreme Court held that educational qualification is an acceptable criterion for determining suitability for an appointment to a particular post or cadres. Educational qualification can be made the basis for classification of employees in state service in the matter of pay scales, promotion etc. Higher pay scale can be prescribed for employees possessing higher qualifications.

In another case the Supreme Court held that where selection was made without interview or fake or ghost interviews, final records were tampered with and document were fabricated, an inference can be drawn that the whole selection process was motivated by extraneous consideration. The entire selection process was set aside as being arbitrary. The selectees had no right to assume office. The Supreme Court observed that "the whole examination and interview have turned out to be fancier exhibiting bare character of those who have been responsible for the sordid episode. It shocks our conscience to come across such a systematic fraud."<sup>35</sup>

Section 16 guarantees equality of opportunity in matters relating to appointment in the state services. Equality of opportunity implies that every citizen is entitled to an employment or appointment to any office under the state in accordance with his or her qualifications and ability.

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<sup>33</sup> Id. at 6.

<sup>34</sup> Id. at 7.

<sup>35</sup> Union of India v. Tarun K. Singh, AIR 2001 SC 2196.

The expression "matters relating to employment", shows that Article 16 is not confined to initial matters but will apply to matters subsequent to appointment as well. Article 16 is not violated by provisions for compulsory retirement to Government servants in public interest. In **P. R. Naidu v. Government of Andhra Pradesh**<sup>36</sup>, the petitioners were retired as compulsorily retirement in public interest. It was held that the provisions for compulsory retirement in public interest applies to all Government servants as such Article 16 does not prohibit the prescription of reasonable rule for compulsory retirement.

In **Air India v. Nargesh Meerza**<sup>37</sup>, the air hostesses challenged the provisions which required them to retire at the age of 35 years or if they get married within four years of confirmation or on first pregnancy. It was held that these provisions were discriminatory and violative of Articles 14, 15 and 16 of the Constitution. Reservation for backward classes.- Article 16(4) is the second exception to the general rule embodied in Article 16(1) and (2). According to Art. 16(4), the state having power in regard of making the special provision of reservation For any backward class of citizens with respect to appointment or employment of a post served by the State.

The scope of Article 16(4) was considered by the Supreme Court and struck down the "carry forward rule" involve the regulation of appointment for the Backward class of citizen for the government service of state. The Court on the ground of power exercised by the government denied the reasonable equality of opportunity in matter of appointment of the class members other than backward class.<sup>38</sup>

As in 1963, the rule of 1955 due to carry forward rule 43 appointments were supposed to fill as per the result of the examination although no appointment has been made due to among the 43 appointments , 28 vacancies to filled by the S.C.'s and S.T.'s candidate. Thus the rule was declared unconstitutional by the court in the devadasan case.

Undoubtedly, Article 16 (4) is an enabling provision and confers the State a discretionary power to make appointments In favor of backward class citizens who are not adequately represented in their opinion of the government, although it is not a fundamental right.

The Supreme Court in **C.A. Rajendran v. Union of India**<sup>39</sup>, held that it is open to State to withdraw the benefits conferred on the Scheduled Castes and Scheduled Tribes and they have no remedy in the Courts. In *Indira Sawhney v. Union of India*, AIR 1993 SC 477, the Supreme

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<sup>36</sup> AIR 1977 SC 854.

<sup>37</sup> AIR 1981 SC 1829.

<sup>38</sup> *Devadasan v. Union of India*, AIR 1964 SC 179.

<sup>39</sup> 1968 SCR (1) 721.

Court by 6-3 majority held that the decision of the Union Government to reserve 27% government jobs for backward classes is constitutionally valid provided that socially advanced persons-creamy layer amongst them are excluded. But the Court has held that the reservation should not exceed more than 50 per cent and also that there cannot be reservation in promotions. The Court has held that the backwardness of a class can be identified on the basis of caste and not on economic basis.

The Supreme Court has recommended that the seats reserved for the backward classes should be based on the mean test. It further recommends that the reservation policy be reviewed every five years, and that if a class has reached a point where reservation is not required, its name should be removed from the list of backward classes.<sup>40</sup>

**The Constitution (77th Amendment) Act, 1995** has added a new clause (4-A) to Article 16 of the Constitution which enables the State to make provisions for reservation for SC's and ST's in government job which are not adequately represented in the services of the State. It says, Nothing in this article shall prevent any provision for reservation (in matters of promotion with the consequential seniority of any class) for the S.C's and S.T.'s which they not having adequately representation in the service of the state.”

**The Constitution 81<sup>st</sup> Amendment)Act. 2000** added a new clause (4-B) after clause (4 A)to Article 16 of the Constitution which seeks to end the 50% ceiling on reservation of SC's/ST's in backlog vacancies which could not be filled up in the previous year or years due to non-availability of eligible candidates. Those vacancies will treated as a separate class and cannot be considered together with vacancies of the succeeding year in which they are to be filled up, even if it exceeds the limit of 50% imposed by the Supreme Court in the case of Indira Sawhney case.

**The Constitution (85th Amendment) Act, 2001** - By this Amendment in Clause 4-A of Article 16, for the words "in matter of promotion to any class" the words "in matters of promotion, with consequential seniority, to any class" has been substituted. The aim and object is to extend the benefit of reservation in favour of the SC/ST in matters of promotion with constitutional seniority with effect from April, 1995 when the 77th Amendment Act was passed. Clauses 4-A and 4-B which are inserted in Article 16ofthe Constitution neither alter Article 16 nor do they obliterate constitutional requirements, viz. 50% ceiling, creamy layers: Post based promotion, that is, efficiency in administration under Article 335.

**77th Amendment, 81st Amendment and 82nd Amendment are valid subject to above**

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<sup>40</sup> K. C. Vasanth Kumarv. Karnataka, 1985 SCR Supl. (1) 352.

**limitations- In M. Nagraj v. Union of India<sup>41</sup>,**

The five-judge Bench has unanimously observed that the constitutional amendments which have inserted Article 16(4-A) and Article 16(4-B) flow from Article 16(4) and these do not alter basic structure of Article 16(4). The Supreme Court has held that 77th, 81st and 82nd Constitutional Amendments providing for reservation are enabling provisions and they may not change Article 16(4) in its entirety. They retain control of the factor, i.e., backwardness and inadequacy of representation, which allows the States to make reservations in view of the overall effectiveness of state administration under Article 335.

Such amendments are for SCs and STs only. Such changes do not wipe away statutory provisions, i.e., ceiling limits of 50 percent, the principle of creamy layer, the sub-classification of OBC and SCs and STs, the definition of post-based roster with an incorporated provision of removing the impugned amendment fall under Parliament's amending authority.

The two tests must be satisfied in applying the basic structure principle- the '**width test**' and the '**identity test**.' Article 16(1) does not prevent the State from recognizing the compelling interests of Backward Classes within the society. Article 16(4) refers, by reservation, to affirmative action. The Government is free to make a reservation if it is satisfied that Backward Classes are inadequately represented in the service on the basis of quantifiable data.

In all those cases where the States decide to provide reservation two circumstances must co-exist- (1) backwardness, and (2) inadequacy of representation. If these tests are not applied by the States the reservation would be invalid. The structure of Articles 14, 15 and 16 is not altered by these Amendments. The identity of the Constitution is not changed by these Amendments. Therefore, the Court made it clear that it is within its discretion to provide for reservations according to the restrictions set out above, but it must determine in each case the existence of compelling reasons, namely backwardness, inadequacy of representation and overall administrative efficiency before allowing reservation provision.

The State is not bound to provide for reservation. But before exercising their discretion to make such provision the State has to collect quantifiable data which show the two grounds – backwardness and inadequacy of representation of that class in Government services. The State has to see that the reservation does not lead to excess of 50% ceiling limit, or obliterate creamy layer or extend the reservation for indefinite period.

**In Ashok Kumar Thakur v. Union of India<sup>42</sup>**, a five Judge Bench Supreme Court headed by

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<sup>41</sup> AIR 2007 SC 71.

<sup>42</sup> (Writ Petition (civil) 265 of 2006.

Chief Justice K. G. Bal Krishnan held that the 93<sup>rd</sup> Amendment Act of 2006 providing 27% reservation in admission to OBC candidates in higher educational institutions like IIT's and IIM's is constitutional. The court held that the benefit of reservation cannot be made available to creamy layer candidates. The court held that reservation must be reviewed in after every five years The creamy layer requirement will not apply to SC/ST's candidates. They will be given reservation every year.

The supreme court held a fresh exercise in the light of M. Nagraj case, the categorical imperative in which Articles 16(4-A) and 16(4-B) were held to be constitutionally valid as enabling provisions for reservation in promotion with consequential seniority and the State can make reservation for the same on certain basis or foundation.<sup>43</sup>

## **XI. RESERVATION IN PROMOTION**

Reservation in promotion has been permitted in Article 16 (4A) of the Constitution referred under the important subject while giving the wide interpretation of the term 'employment' or 'appointment' are wide enough in terms of public service. Earlier was settled that the words 'employment' or 'appointment' are wide enough to include the matter of promotion including promotion to selection posts. But a 9-Judge Bench in the "Indra Sawhney" case held that promotion is not covered by appointment.

In order to restore earlier interpretation, a new Clause (4-A) has been inserted in Article 16 of the Constitution India which provides as- "Noting in this article shall prevent the State from making any provision for reservation in matters of promotions to any class or classes of posts in 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.

Thus the state has been empowered to give promotions to the Scheduled Castes and Scheduled Tribes if they are not represented in the service adequately. Reservation in the promotion was held, in *Kishori v. Union of India* not to infringe the provisions of Article 16(1) if equality of opportunity for promotion is not denied to a Government servant holding different post in the same grade.

**In Ajit Singh case<sup>44</sup>** it was held that Besides "backwardness" and "inadequacy of representation," the state must also keep in mind the "overall efficiency ", so these three factors must be kept in mind by the allocating government for the reservation in promotion for the

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<sup>43</sup> U.P. Power Corporation Ltd. v. Union of India, AIR 2012 SC 2728.

<sup>44</sup> 1999 AIR SCW.

Scheduled Castes and Schedule Tribes.

**In M. Nagraj v. Union of India** it was held that clauses (4A) and (4B) fall in the pattern of clause (4) and as long as the parameters of these articles are complied with the provisions for reservation, cannot be faulted it backwardness" and inadequacy of representation". There is no violation of basic structure and are mere enabling provision nor do they obliterate the constitutional requirement, namely ceiling limit of 50%.

**In Uttar Pradesh Power Corporation Ltd. v. Rajesh Kumar and ors.**<sup>45</sup>, The Supreme Court held that in the light of judgment constitution bench in M. Nagraj case, it is a categorical imperative. The state is required to place before the Court the requisite quantifiable data in each case and to satisfy the court that the said reservation become necessary on account of inadequacy of representation of Scheduled Castes and Schedule Tribes candidates in a particular class or classes of posts without affecting the general efficiency of service.

While deciding the question as to whether parliament may exclude the creamy layer from the presidential lists contained under Articles 341 and 342. Reservation is a tool for the backward class of citizens to move forward so that they can march hand in hand with the other citizens of India on an equal basis. This will not be possible if the creamy layer gets job in the public sector and leaving rest of the class as backward as they were would be against the aspirational goal of the constitutional principles. Thus, while applying the one of the most frequent principles rightly apply in constitutional provision is the harmonious interpretation of Article 14 and 16 along with the Article 341 and 342. It is in complete domain of the parliament to whether they wish to include or exclude persons from the presidential list based on the relevant factor. Similarly, while the constitutional court dealt with the principle of reservation will be apply within their jurisdiction to exclude the creamy layers from such groups or sub-groups while applying the principle of equality under article 14 and 16 of The Constitution of India.<sup>46</sup>

## **XII. CONCLUSION**

Though with the study of the principles of equality as envisaged form the Article 14 to Article 16 of the Constitution of India, the new dimension and principles and with the help of judicial precedents tried to establish the relations socio- economic balance among the member of the community and in case of such classes of person who is still socially and educationally far backwards these inherent rights tried to push him back in the front line but though due to a number of amendments specifically for the promotion purpose it is no doubt to mention here

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<sup>45</sup> Supra note 31.

<sup>46</sup> Jarnail Singh & others v. Lachhmi Narain Gupta (2018) 10 SCC 396.

that “Reservation itself has been promoted”.

Some of the cases such as *Air India v. Nargesh Meerza Regulation* , *John Vallamattom v. union of India* and *D.S Nakara v. union of India* were put the new concept of equality for the protection of people of India. And in regard of equality in public service matter the provisions of article 16 clearly reflect that the opportunity shall be open for the every citizens of India in matter of employment or appointment of public service. Hence the term employment and appointment very frequently have been here used, the formal expression used to designate the subjects profession or trade or whatever his action of work doing for living wages whether its public or private sector and on the other hand the latter expression of the designation and nature of the job which we also known as appointment letter.

Right to equality is one of the most important parts of our Indian constitution, which reinforces all those who belong to Indian nationality. The future generation needs to secure their right and change our developing India into developed India. Dr. Jennings rightly said: "Equality before the law means that the law should be equal to equals and should be enforced fairly, and treated equally. The right to sue and be sued for the same kind of conduct will be the same for all full-age people, without distinction of race , ethnicity, education , social status or political power.

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### **XIII. BIBLIOGRAPHY**

#### **A. Primary Sources**

- The Constitution of India

#### **B. Secondary Sources**

##### **1. Books**

- D. D. Basu and S. P. Sengupta, *Administrative Law* (Kamal Law house, 7<sup>th</sup> edn., 2019).
- D. D. Basu, *Introduction to the Constitution of India* (Lexis Nexis, 21<sup>st</sup> edn., 2013).
- P. M. Bakshi, *The Constitution of India* (Universal Law Publishing, 12<sup>th</sup> edn., 2014)

##### **2. Cases**

- *Air India v. Nargesh Meerza* AIR 1981 SC 1829
- *Ashok Kumar Thakur v. Union of India* Writ Petition (civil) 265 of 2006.
- *C.A. Rajendran v. Union of India* 1968 SCR (1) 721
- *Devadasan v. Union of India*, AIR 1964 SC 179
- *E.P. Royappa v. State of Tamil Nadu* 1974 SCR (2) 348
- *Indra Sawhney v. Union of India* (1992) Supp. (3) SCC 217
- *K. C. Vasanth Kumary. Karnataka*, 1985 SCR Supl. (1) 352
- *M. Nagaraj v. Union of India* AIR 2007 SC 71
- *M. R. Balaji v. State of Mysore* 1962 SCR Supl. (1) 439
- *Reserve Bank of India v. Gopinath Sharma* AIR 2006 SC 2614
- *Shri Ram Krishna Dalmia vs. Justice S. R. Tendolkar* 1959 SCR 279
- *Secretary, State of Karnataka v. Uma Devi*
- *Union of India v. Tarun K. Singh*, AIR 2001 SC 2196
- *Reserve Bank of India v. Gopinath Sharma* AIR 2006 SC 2614
- *U.P. Power Corporation Ltd. v. Union of India*, AIR 2012 SC 2728.
- *Jarnail Singh & others v. Lachhmi Narain Gupta* (2018) 10 SCC 396.

##### **3. Website**

- - <http://indiankanoon.org/doc/1591733/>
- <http://indiankanoon.org/doc/599701/>
- <https://indianexpress.com/article/india/supreme-court-what-was-done-to-justify-quota-in-sc-st-promotion-7554570/>

- <https://www.indialegallive.com/constitutional-law-news/supreme-court-news/reservation-in-promotion-supreme-court/>
- <https://www.hindustantimes.com/analysis/a-new-deal-on-caste-the-battle-over-reservations-in-promotions-101634019792989.html>
- <https://www.ndtv.com/india-news/not-going-to-reopen-decision-on-grant-of-reservation-supreme-court-2540606>.

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