

Reservation Part-15

Article 15 of the Indian constitution talks about the prohibition of discrimination (unreasonable differentiation)

Article 15 prohibits the discrimination on the basis of religion, sex, caste, race and place of birth. Indian Constitution also prohibits any kind of disability, restriction or condition with regard to accessing shops, hotels, public parks and restaurants. Also, no individual can be prohibited from using wells, tanks, bathing gaths and any other public resorts.

The extent of Reservation in India

In India, reservation is provided in:

1. Government Educational Institutions (like IITs, IIMs etc) – as per Article 15 – (4), (5), and (6)
2. Government Jobs (like IAS, IPS etc) – as per Article 16 – (4) and (6)
3. Legislatures (Parliament, and State Legislature) – as per Article 334

Before 2019, the reservation was provided mainly on the basis of **social and educational backwardness** (caste). However, after the 103rd constitutional amendment in 2019, **economic backwardness** is also considered.

Apart from the reservation quota, additional relaxations like upper-age relaxations, additional attempts, and lower cut-off marks are also provided for various reservation categories.



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Reservation quota in India for Government Jobs Reservation quota in India for Government Jobs and Higher Educational Institutions

Reservation Category	Reservation Quota (%)
ST	7.5
SC	15
OBC	27
EWS	10
Total	59.50%

A vacancy reserved for SCs or STs or OBCs cannot be filled by a candidate other than an SC or ST or OBC candidate, as the case may be.

As seen from the above table, about **60% of seats are reserved in India** – for various sections like ST, SC, OBC, and EWS – with respect

to Government jobs and Higher Education Institutions. 3% of seats are also reserved for differently-abled persons across all categories.

Recently, the Constitutional (103rd Amendment) Act of 2019 has provided 10% reservation in government jobs and educational institutions for the “economically backward” in the unreserved category.

SC/ST Reservation

The objective of providing reservations to the Scheduled Castes(SCs), Scheduled Tribes (STs) in services is not only to give jobs to some persons belonging to these communities. It basically aims at empowering them and ensuring their participation in the decision-making process of the State.

Scheduled Castes (SC) are given 15% quota in jobs/higher educational institutions while Schedule Tribes (ST) are given 7.5% quota in jobs/higher educational institutions.

Reservation is provided not only with respect to direct recruitment but also with respect to promotions for SC/ST category (Article 16(4A)).

There is no concept of ‘creamy layer’ with respect to SC/ST reservation. This means that irrespective of the income status or the government posts held by the parents, children of SC/ST parents will get SC/ST Reservation.

OBC Reservation

Reservation for Other Backwards Classes (OBC) was introduced based on the Mandal Commission Report (1991). The quota for OBCs is 27% in government jobs and higher educational institutions.

However, there is a concept of 'creamy layer' with respect to the OBC reservation. Only those from OBC who comes under Non-Creamy Layer would get OBC reservation.

The creamy layer concept brings income and social status as parameters to exclude some of the privileged members of OBC from the extent of reservation. This concept also keeps a check to ensure that the benefits of reservation do not get extended to subsequent generations.

EWS Reservation

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The Central Government of India recently introduced EWS Reservation. 10% quota is provided for the Economically Weaker Sections (EWS) among General Category candidates in government jobs and educational institutions. This is done by adding clauses for the same in the Indian Constitution (103rd Constitution Amendment Act, 2019)

Will Reservation System in India compromise the Merit (and efficiency of the system)?

Article 335 of the Indian Constitution states that

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*The claims of the member of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently, with the maintenance of **efficiency of administration** in the making of appointments to services and posts in connection with the affairs of the Union or of a State.*

*Provided that nothing in this article shall prevent in the making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for **relaxation in qualifying marks in any examination or lowering the standards of evaluation**, for reservation in*

matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.

Article 15: Prohibition of discrimination:

Article 15(1): Article 15(1) prohibits the state from discriminating any citizen on the basis of these following 5 categories:

Religion – No person can be discriminated on the basis of religion in order to access any public place etc...

Race – Any person's origin shouldn't be a basis of discrimination.

Caste – Mainly discrimination on the basis of caste is prohibited. This prevents the crimes committed against lower caste.

Sex – Gender of any particular individual can't be a basis in order to discriminate.

Place of Birth – Any person place of birth can't be taken into consideration and discriminate them.

Any of the above.

In the case "**DP Joshi v/s State of Madhya Bharat**"¹, there was a medical college which was established in Indore and it was under the control of Madhya Pradesh Government. The govt, had made a rule which stated that all the Domicile students residing in Madhya Bharat wouldn't be required to pay any "capitation fees", but all the non-domicile students had to pay a nominal fees of Rs. 1300-1500 as capitation fees. This rule was challenged by filing a writ in Supreme Court under Article 32 claiming that it had violated the Fundamental rights guaranteed under Art 14 and Art 15(1). The court had passed a judgement stating that, this rule doesn't violate article 15(1) since "Place of birth" and Place of Residence" are two distinct terms.

Pradeep Jain vs UOI (V.M.K.)

= Court had found the policies for reserving jobs for "sons of the soil" as violation of constitution.

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Article 15(2):

Article 15(2) lays down that no individual shall be subjected to any disability, restriction, or any other form of discrimination with regard to:

In access of shops, parks, restaurants, hotels or any other public place. Each and every individual have the right to use wells, tanks, bathing Ghats, roads, visit public resorts and any other place which are maintained by government authority for general public.

Article 15(2) applies to every individual which includes private actions while Article 15(1) alludes to all the obligations done by the State only.

Reservation

On research, we find that Article 15 Clause (3), (4) and (5) itself stands as an exception to Article 15 Clause (1) and (2). Article 15 Clause (3), (4) and (5) states that the legislature is free to formulate special provisions:

Though being the exception to the legislation that forbids discrimination on grounds of sex and caste, this does not come under discrimination. Rather, the term 'PROTECTIVE DISCRIMINATION' (also known as Positive Discrimination) is used by the legislators to justify reservation and is defined as the policy of providing an equal platform to the underprivileged and the suppressed classes and to lift their status in the society. This system of reservation works on the principles of intelligible differentia (difference capable of being understood).

Article 15(3):

Nothing in this section can stop the state from making any special laws for women and children. Under this article, the state has been empowered to make special provisions for Women and Children.

Right to free and compulsory education for children under the age of 14 years, section 56 of CPC, the Maternity Benefit (Amendment) Act 2017, etc. are some of the best examples of such provisions.

Whereas In *Union of India v. K.P. Prabhakaran*, (1997), the railway administration took the decision to appoint Enquiry cum reservation clerks in four metropolitan cities i.e. Mumbai, Delhi, Kolkata, and Chennai. The decision stated that the post would be held by women only. The court rejected the contention of the government urging that this provision is protected under Article 15(3). It said that Article 15(3) cannot be read as the provision or as an exception to what is guaranteed under Article 16 (1)(2).

These cases clearly explain the applicability of the phrase 'Special provisions for women and children' in matters of the reservation to education and employability. But what if there are laws which differentiate or prefer women over men, can it be called discrimination.

Article 15(4)

Clause (4) was added by the Constitutional First Amendment Act with effect from 18th June 1951.

The object of this amendment was to enable the state to make special provisions for the advancement of socially and educationally backward classes of citizens or for the scheduled caste and scheduled tribes.

The purpose of this amendment was also to override the Hon'ble Supreme Court's Judgement in *Champakam* case.

State of Madras VS. Champakam dorairajan 1951 S.C

In this case, the Madras government fixed proportion of students of each community to be admitted in the state medical colleges on the basis of race, religion and caste. It was challenged as violative of article 15.

The state in defence argued that article 46 of DPSP requires that the state should promote educational and economic interest of weaker sections.

"The Supreme Court held that DPSP have to conform and run subsidiary to fundamental rights."

Insertion of clause 4

As article 15 originally enacted, did not contain clause 4. It was inserted by the Constitutional First Amendment Act, 1951 as a result of the decision in the case of champakam dorairajan, which set aside reservation of seats in educational institutions on the basis of caste and community.

Gulshan Prakash VS. State of Haryana 2010 S.C

It was held that the principle behind article 15(4) is that a preferential treatment can be given validly when the socially and educationally backward classes need it. This article enables the state government to make provisions for the upliftment of schedule castes and scheduled tribes including reservation of seats for admission to educational institutions.

It was also held that article 15 (4) is not an exception but only makes a special application of the principle of reasonable classification.

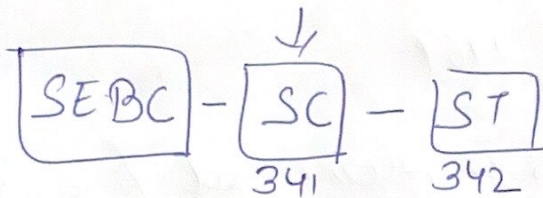
Art-15 (4)

Inserted by 1st Constitutional amendment.

State of Madras v/s Champakam Dorairajan (1951) SC

15 (4) - Special provision

↓
Advancement of



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MR Balaji v/s State of Mysore 1963

Mysore Govt has reserved Seats for all communities except Brahmin community.

Mysore Govt treat all community as "Socially and Backward class" except Brahmin community.



68% seat reserved for all ex. Brahmin in engineering & Medical college.

Backward class
More backward class.

SE. 28% - BC 15% - SC
22% - MBC 3% - ST

Supreme Court strike out the order which was solely based on Caste. Also stated that Art 15(4) neither have reservation on Backward or More Backward while determining Art 15(4) admit both Socially and educationally backward class not one.

- No Caste only
- Reservation should be less than 50%
- further Categorisation is not valid
- Positive Discrimination.

T. Devadasan vs UOI 1964

Carry forward Rule was implemented for SC & ST but not more than 50%.

Mandal Commission Report

They wanted proportional reservation for OBC is 52% & Total 74% reservation (22% for SC & ST)

→ Balaji Judgement was hindrance.

Indra Sawhney v/s UOI 1992 (V- Imp)

Upheld Reservation can't be more than 50%.

→ Economic reasons can't be called backwardness.

Overrule Balaji



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→ Can be $\left\{ \begin{array}{l} \text{BC - Backward} \\ \text{MBC - More Backward} \end{array} \right\}$ Caste System

→ Horizontal & Vertical Reservation

	SC	ST	OBC	EWC	General	Vertical
100 Seats	17	12	20	10	41	
Female	2	2	2	4	7	
(Horizontal)	1	1	1	0	2	

Art 15(5) - 93rd A.A. 20th Jan 2006

It empowers state to make laws for socially and educationally backward class & SC & ST for the admission to education institutes.

But can't touch minority u/s 30(1)

aided

unaided (Private)

P. A. Inamdar

How much power does state have over private institution?



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T.M.A. Pai foundation vs State of Karnataka (2003)

Held that the state could not make reservation of seats in admission in privately run educational institutions.

It can only be common admission test & Merit.

Islamic Academy vs State of Kerala (2003)

State could fix quota for admission but could not fix fee, adm. can be done on basis of entrance test & merit.

P. A. Inamdar vs State of Maharashtra (2005)

Islamic Society case was overruled and the position of TMA Pai case was reiterated by not allowing state to make reservation.

Art-15(6) - EWS = 104th amendment Bill
2019
(103) Amendment.

This article empowers the state to make special provisions for the advancement of 'economically weaker section' of society, which would even include the reservation in educational institutes.

**Case Title: Neil Aurelio Nunes and Ors v. Union of India & Ors|
Writ Petition (C) No. 961 of 2021**

Coram: Justices DY Chandrachud and AS Bopanna

Citation : 2022

In our opinion, it cannot be said that the impact of backwardness simply disappears because a candidate has a graduate qualification. Indeed, a graduate qualification may provide certain social and economic mobility, but that by itself does not create parity between forward classes and backward classes. In any event, there cannot be an assertion of over-inclusion where undeserving candidates are said to be benefitting from reservation because OBC candidates who fall in the creamy layer are excluded from taking the benefit of reservation. Thus, we find that there is no prohibition in introducing reservation for socially and educationally backward classes (or the OBCs) in PG courses."

Reference was also made to the Top Court's judgement in **Pradeep Jain v. Union of India (1984) 3 SCC 654, Dr Preeti Srivastava v. State of Madhya Pradesh (1999) 7 SCC 120, AIIMS Student Union v. AIIMS 2002 (1) SCC 428 and Saurabh Chaudhary v. Union of India 2003 (11) SCC 146.**