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## Right to Equality as Protective Discrimination of Society

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### ABSTRACT

There are two concepts for Equality where one is giving the notion of formal Equality means everyone is equal before the law, and second one says about proportional Equality in which the state has responsibility to take affirmative action in protection of Equality. Art 14 to Art. 18 of the constitution stands for the right to Equality, by the lot many efforts of the parliament, state legislature and judiciary, we can realize that the right to Equality is actual protective discrimination of the society.

**KEYWORDS:** Right to Equality, Art 14 to Art. 18 of Indian Constitution, Part III of Indian Constitution (Fundamental Rights) Indian Constitution

### INTRODUCTION

As we know Art-14 of the Indian constitution provides- "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India and in detail there are two concepts for the Equality is "Formal Equality" and "proportional Equality."<sup>2</sup>. There is difference between formal Equality and egalitarian Equality. Formal Equality means that law treats everyone equal and does not favor any one either he belongs to advantaged section of the society.

Concept of "proportional Equality" expects the states to take affirmative action favor of disadvantaged sections of the society of disadvantaged section of the society within the framework of liberal democracy.

### Detail Note

Art. 14- The state shall not deny to any person Equality before law or the equal protection of the laws within the territory of India means Right to equal treatment in similar circumstances. The law must operate equally on all persons under like circumstances means the doctrine of

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<sup>2</sup> M. Nagraj V. union of India (2006) 8 scc 212

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classification. The amalgamation of two classes of people for reservation would be unreasonable as two different classes are treated which is in violation of the Art. 14.

"Treats unequal as equals also violates Art.14"<sup>3</sup> Primary general principle of equality is enunciated in Art.14 of the constitution and that impacted in following matters.

e.g. - granting licenses

- entering to any business or entering in to a contract relating to government business.
- Issuing quota - giving jobs
- Equal protection requires affirmative by the state towards unequal's by providing facilities and opportunities like.
- Education
- Government Contracts
- Government Service
- Land Reform
- -Market value
- Company
- Co-operative society
- Ban on cattle slaughters
- Allotment of shops
- Admission
- Accommodation etc.

### Art-15

Separate provisions to cover specific discriminatory situations have been made by subsequent Articles, Thus Art-15 prohibits discrimination against citizens on such specific grounds as religion, race, caste, sex or place of birth.

1. The state shall not discriminate against any citizen on grounds only of religion, race, cast, sex place of birth or any of them.
2. No citizen shall on grounds only of religion, race cast, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to.
  - a. Access to shops, public restaurants, hotels and place of public entertainment or.
  - b. The use of well tanks, bathing Ghats, roads and places of public resort maintained wholly or partly out of state fund or dedicated to the use of general public
3. Nothing in this article shall prevent the state from making special provision for woman and children.
4. Nothing in this article shall prevent the state from making any special advancement of any socially and educationally backward classes of citizens or for the scheduled castes and scheduled Tribes.

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<sup>3</sup> Atyant Picchara Barg Chatra sangh vs. Jharkhand State Vaishy foundation 2006 6 scc 718, 714 para 21.

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5. Nothing in this article shall prevent the state from making any special provision by Law for the advancement of any S.E.B.C's of citizens or for SC's, ST's, in so far as such special provisions relate to their admission to educational institutions, including private educational institutions, whether aided or unaided by the state, other than the minority Educational institutions.<sup>4</sup>

### Art. 15 (4)

Envisages the policy of compensation or protective discrimination but it should be reasonable and consistent with ultimate public interest i.e. national interest and the interest of community or society as a whole,

In the case *AIIMS student's union vs. AIIMS*<sup>5</sup> and *Preeti Srivastava (Dr.) Vs. State of M.P.*<sup>6</sup> Hnr. Supreme Court stated that "Institutional reservation is not supported by the constitutional principals. A certain degree of preference for students of the same institution intending to prosecute further studies their in permissible on the grounds of convenience, suitability and familiarity with an educational environment which has to be reasonable and not excessive and rule of merit and quality should not be departed from. The preference has to be kept in limits. Minimum standard cannot be so diluted as to become practically non-existent, such a marginal institutional preference is tolerable at the post- graduation level but is rendered intolerable at still higher level such as that of super specialty. In the instant case the AIIMS students trailed in the race and yet were declared winners. One who justifies reservation must place on record adequate material, enough to satisfy an objective mind judicially trained, to sustain the reservation, its extent and qualifying parameters which in the instant case could not be done and hence was found to demonstrate arbitrariness.

### Reasonableness:-

In the sphere of contractual relations, the state, its instrumentalities, public authorities or those whose acts be a insignia of public elements, action to public duty or obligation are enjoined in a manner that is fair, just and equitable, after taking objectively all the relevant options in to consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest and it must not take any irrelevant or irrational factors into consideration or appear arbitrary in its decision.

"Where a corporation handed over a park of historical to a builder to build a "Palika Bazar" without following the proper procedure and keeping in mind the public purpose, the act of the corporation was held to be unreasonable, arbitrary, unfair, oppose to public, public interest and

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<sup>4</sup> (Inserted by 93<sup>rd</sup> ammendment Act. 2005)

<sup>5</sup> *AIIMS student's union v. AIIMS* I SCC 428, 459-61 (para 500 :AIR 2001 SC 3262)

<sup>6</sup> *Preeti Srivastava (Dr.) V.State of M.P.* (1999) 7SCC120: AIR 1999 SC 2894.

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public trust, doctrine. The construction was directed to be demolished<sup>7</sup> classification of members of different classes of people based on their respective castes would be violative of the doctrine of reasonableness.

### Backward Classes

1. Art. 15 (4) qualifies the expression by the words "socially" and "educationally", In order to satisfy the requirement of Art 15 (4) the class must be both socially and educationally backward<sup>8</sup>, Thus mere educational backwardness is not enough if the class is not socially backward and vice versa.
2. The scheduled castes and Tribes being mentioned together with the "backward classes" the clause refers to classes of persons other than the members of SCs and ST's<sup>9</sup> At the same time the fact that the SC's can be enumerated by a presidential order and ST's there is provision for reservation in the constitution (Art. 330, Art 332) while there is no such reservation for members of the backward classes, shows that the problem of backward classes outside the scheduled castes and STs' is not so acute that they can not be specified by enumeration, but must be determined by applying objective test.<sup>10</sup>
- (3) The concept of backwardness is not relative in the sense that any cases who are backward in relation to the "most advanced" classes of the society should be include in it, If such tests were to be applied there would be classified as a backward class.<sup>11</sup> In other words Art. 15 (4) would not justify any further classification within backward class, as "backward" and "more backward classes".<sup>12</sup>
4. Social backwardness is in the ultimate analysis, the result of poverty.<sup>13</sup> The social backwardness which results from poverty is likely to be aggravated by consideration of caste but the classification of backwardness cannot be made solely on the basis of caste<sup>14</sup> and there may be communities which may be backward in particular state such as the Muslims or the Christians even though they may not recognize caste, similarly the occupation<sup>15</sup> or habitation<sup>16</sup> of classes of persons "(eg. people residing in rural areas are generally more backward than those in urban areas)" may also contribute to the backwardness.
5. Caste is, of course one of the relevant circumstances in determining backwardness, but if a group has been classified as backward on other relevant considerations that classification can not be

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<sup>7</sup> M.I. Builders Pvt. Ltd Vs. Radhey Shyam Sahu- 1999 6 SCC 464.

<sup>8</sup> Pratap Singh vs. Hardam Singh, AIR IJSC 82 (Para 3,6)

<sup>9</sup> CF. Indra vs. Union of India AIR 1993 SC 477: 1992 Supp (3) SCC- 217-9 Judges. Ajaykumar Singh Vs. State of Bihar (1944) 4 SCC 401 (Para 4) 1994 (2) JT 662-3-Judges.

<sup>10</sup> Tulsamma V. Vs. Seash Reddi (1977) UJSC 135 n

<sup>11</sup> Tulsamma V. Vs. Seash Reddi (1977) UJSC 135n

<sup>12</sup> Pratap Singh Vs. Hardam Singh (1986) ujsc 82 (para 3,6) AIR 1985 SC 1695

<sup>13</sup> Balaji M.R.v.State of Mysore AIR 1963 SC 649

<sup>14</sup> State of A.P. Vs. Sagar P. AIR 1968 SC 1379

<sup>15</sup> Jayasree K.S. Vs. State of Kerala AIR 1976 SC 2381

<sup>16</sup> Periakaru Ppan A. Vs. State of T.N. AIR 1971 SC 2303

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challenged as invalid on the ground of omission to take caste into consideration,<sup>17</sup> or on the other hand because the class is described by caste.<sup>18</sup> If however, the criterion adopted for determining their backwardness is fictitious; so that the preference given to them virtually amount to a preference on the ground of caste alone, it would not be protected by Cl (4) and would be hit cl.(1)<sup>19</sup>

6. If a caste as a whole is found to be socially and educationally backward the inclusion of such caste in the list of backward classes would not be violative of Art.15 (4)<sup>20</sup> even though a few individuals in that case may be socially and educationally above the average.<sup>21</sup>

### Land Mark Case Laws

1. The Madras Government issued an order (popularly known as the communal G.O.) allotting seats in the state medical Collages, community wise as follow;

Non- Brahmin (Hindu) 06; Backward Hindus 02; Brahmins 02; Harijans 02; Anglo- Indians and Christian (Indian) 01; Muslims 01. This G.O. was declared invalid because is classified students merely on the basis of 'caste' and 'religion' irrespective of their merit. A seven judge bench of the Supreme Court struck down the classification as being based on caste race and religion for the purpose of admission to educational institutions on the ground that Art.15 did not contain a clause such as Art.16 (4)<sup>22</sup>

2. The entire country is taken as one nation with one citizenship and every effort of the constitution makers is directed towards emphasizing maintaining and preserving the unity and integrity of the nation Now if India. is one Nation and there is only one citizenship, namely, citizenship of India an every citizen has a right to move freely throughout the territory of India and to reside and settle in any part of India, irrespective of the place settle in any part of India, irrespective of the place where he is born or the language which he speaks or the religion which he professed and he is guaranteed freedom of trade, commerce and intercourse throughout the territory of India and is entitled to equality before the law and equal protection of the law with other citizens in every part of the territory of India, it is difficult to see how a citizen having his permanent home in Tamil Nadu or speaking Tamil language can be regarded as outsider in Uttar Pradesh or a citizen having his permanent home in Maharashtra or speaking Marathi language be regarded as an outsider in Karnataka, He must be held entitled to the same right as a citizen having his permanent home in Uttar Pradesh or Karnataka as the case may be, to regard him as

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<sup>17</sup> Chitralakha R.Vs. State of Mysore AIR 1964 SC 1823

<sup>18</sup> Rajendra. P. Vs. State of Madras AIR 1968 SC 1012

<sup>19</sup> Balaji M.R. FVs. State of Madras AIR 1963 SC 649

<sup>20</sup> TrilokNath Tiku Vs. State of J.D.K. AIR 1969 SC 1

<sup>21</sup> State of A.P. Vs. Balaram USV AIR 1972 SC 1375 (1395, ) 1399)

<sup>22</sup> State of Madras Vs. Champakam Dorairajan 1951 SCR 525

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an outside would be to deny him his constitutional rights and derecognize the essential unity and integrity of the country by treating it as if it were a mere conglomeration of independent state.<sup>23</sup>

3. The Supreme Court has said that the constitution lays down provisions both for protective discrimination as also affirmative action.<sup>24</sup>

4. It may be noted that the right to equality has been declared by the supreme court as a basic feature of the constitution. The constitution is wedded to the concept of equality. The preamble to the constitution emphasizes upon the principle of equality will be declared invalid Neither parliament nor any state legislature can transgress the principle of equality.<sup>25</sup>

5. Equality is a basic feature of the constitution of India and any treatment of equals unequally or unequal as equals will be violation of basic structure of the constitution of India.<sup>26</sup>

### CONCLUSIONS

Art.14 runs a follows, "The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. This provision corresponds to the equal protection clause of the 14th Amendment of the U.S. Constitution which declares;

*" No state shall deny to any person within its jurisdiction the equal protection of the laws"*

- Art-15 Prohibits discrimination against citizen on such specific grounds as religion, race, cast, sex or place of birth.
- Art-16 guarantees to the citizens of India equality of opportunity in matters of public employments.
- Art-17 abolishes of untouchability and
- Art-18 abolishes titles, other than a military or academic distinctions.

Right to equality permits the classification but prohibits the class legislation means gives the benefit of protective discrimination in form of other Backward classes (OBC), Backward classes (BC), Socially and Educationally Backward Classes (SEBC) and Scheduled cast (SC's) and scheduled Tribe (ST's) and provide the equal opportunities in unequal circumstances to society.

### SUGGESTION

The lot many landmark judgments and by the effective provisions of the constitution, founding fathers of the constitution gives the protective discrimination to the society. But Right to equality is not only the words but it is passion and emotions of the society and Architecture of the our constitution.

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<sup>23</sup> Pradeep Jain vs. Union of India AIR 1984 SC 1420 at 1424, 1425

<sup>24</sup> Andhra Pradesh Service Commission Vs. Badhavnath (Baloji) 2009 5 SCC1

<sup>25</sup> Indra Sawhney Vs. Union of India, AIR 1993 SC 475 - 9 Judges

<sup>26</sup> M.G. Badappanvar Vs. State of Karnataka, AIR 2001, SC. 260

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If we see in the Art. 17 of the constitution there is provision of abolishes of the untouchability as gone through the Art-17 says. "Untouchability", is abolished and its practice in any form is forbidden. The enforcement- of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

The thrust of the Right to Equality is to liberate the society from blind and ritualistic adherence and traditional beliefs. It seeks to establish a new and ideal society. The disabilities to which Dalits were subjected have been outlawed and subjecting them to those disabilities would be violative of the part-III and IV of the constitution<sup>27</sup>. The vision of the founding fathers of the constitution to liberate the society from blind and ritualistic adherence to mere traditional superstitious beliefs sans reason or rational basis has found expression in the form of Art-17.<sup>28</sup>

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### *Conflict of Interests*

The author declared no conflict of interests.

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<sup>27</sup> State of Karnataka Vs. Appa Balu Ingale Supp (4) Scc 469 (Para 23 and 36)

<sup>28</sup> N. Adithayan V. Tranvancore Devaswom Board (2002) 8 SCC 106, 122-23 (Para (16)