

Non-Discrimination on the Grounds of caste

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Description of Module

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Non-Discrimination on the Grounds of Caste

Community: means people living in one particular area or people who are considered as a unit because of their common interest. India is one community so law made in territory of India shall be uniform without any discrimination. In India first non-discriminative step has been taken by adopting single citizenship which focuses that India is one community only there is no scope of discrimination.

1. **Non-discrimination:** The preamble of the constitution sets the goal of the constitution and secure to all citizens equality: i. Status ii. Of opportunity iii justice and Liberty. The goal set by the preamble is extended by Art 14 to 18 of the Constitution.
2. Article 15(1) : Prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.
3. Article 15(2): Prohibits the general public and any citizen from discriminating any citizen on grounds only of religion, caste, sex, and place of birth or any of them. Therefore one citizen cannot be discriminate to access to shop, public restaurant, hotels and places of public entertainment or to use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds.
4. Article 15(4) : empowers the state to make any law for the advancement of any society and educational backward class of citizens or for the SC and ST.
5. Article 15(3): empowers the state to make any special provision for women and children.

Protective Discrimination: In the eyes of law there is no discrimination between man or woman. Ex: clerk or Prime Minister man or women are competent persons. There is no discrimination between them but in fact man is stronger than woman. Therefore keeping the weak physical position of the woman and children the State is authorized by the Article 15(3) to make any special provisions for their benefit it is called protective discrimination. Similarly for the advancement of the SEBC people and STs the State empowered to make provisions protecting them under Article 15(4). It is also a protective discrimination.

6. Under the Factories Act 1948, Children Act 1960, Child Labour (Prohibition and Regulation) Act 1986 etc. The state prohibits the appointment of children in the factories, and on the machineries of dangerous and hazardous nature. It is not a discrimination against the children but it is protective discrimination.
7. Article 16: Equality of opportunity in matters of public employment: There shall be equality of opportunity for all citizens in matter relating to employment or appointment to any office under the State.
8. Distinction between 15(4) and 16(4) : Article 15(4) empowers the State to make 'Special' Laws for the advancement of any socially and educationally backward classes of citizens or for the SC and ST. Article 16(4) empowers the State to make laws for the reservation of appointments or posts in favour of any backward class of citizens.
9. The Reservation to Backward class people to uplift them educationally and employment purpose. Reason for providing reservation by the farmers was that the SC, ST and OBC were socially economically were crushed by the forward caste people for centuries in fact more than three thousand centuries Education was vested with Brahmin, Administration was vested with Kshatriyas Business was vested to Vysyas. The remaining classes were allotted smaller professions. Hereditary occupations ruled throughout the country irrespective of its region, religion, culture, language etc. Dharmasastras were framed to exploit these fourth class people very badly. After Independence the framers thought to provide certain protection to these classes.
10. Dr. Ambedkar called the reservations 'Compensatory benefits' to SC, ST and OBC. The Caste has not been defined in the constitution only class is defined.
11. Balaji vs State of Mysore (AIR 1963 SC 649): The Mysore Government reserved the seats in the Medical and Engineering college in the state to Backward classes 28%, More backward classes 20% SC & ST 20% - Total 68%. Therefore only 32% seats were available to the students of other communities on the merit pool. Balaji challenged the validity of the reservation formulated by Mysore Government contending that the classification of the Mysore Government that about 90% of the Population of the State backward and that 68% and 68% was injustice to the merit students.

Judgment: The supreme court agreeing with the petitioner struck down the reservation policy of the Mysore-Government. The supreme Court held that the special provision should be provided to the socially and backward class people but that should not exceed 50%.

12. Indra Sawhney & others vs Union of India and others (AIR 1993 SC 477) (Mandal Commission - Reservation case)

13. Article 17: Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability out of Untouchability shall be an offence punishable in accordance with law.

14. Several acts have been made basing upon the Article 17 such as "The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, Protection of Civil Rights Act 1955.

State of Karnataka v Appa Balu Ingale :the charge against the respondents was that they restrained the complainant party by show of force from taking water from a newly dug up borewell on the ground that they were untouchables.The Supreme court held that the conviction.