

“Winners embrace hard work. They love the discipline of it, the trade-off they’re making to win. Losers, on the other hand, see it as punishment. And that’s the difference.”



3.

Part III

Fundamental Rights

What about Constitutional Amendment Acts?

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What about Constitutional Amendment Acts?

PART XX

AMENDMENT OF THE CONSTITUTION

¹[Power of Parliament to amend the Constitution and procedure therefor.]

368. ²[(1) Notwithstanding anything in this Constitution, Parliament may in exercise of its constituent power amend by way of addition, variation or repeal any provision of this Constitution in accordance with the procedure laid down in this article.]

³[(2)] An amendment of this Constitution may be initiated only by the introduction of a Bill for the purpose in either House of Parliament, and when the Bill is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting, ⁴[it shall be presented to the President who shall give his assent to the Bill and thereupon] the Constitution shall stand amended in accordance with the terms of the Bill:

Provided that if such amendment seeks to make any change in—

(a) article 54, article 55, article 73, article 162 or article 241, or

(b) Chapter IV of Part V, Chapter V of Part VI, or Chapter I of Part XI, or

(c) any of the Lists in the Seventh Schedule, or

(d) the representation of States in Parliament, or

(e) the provisions of this article,

the amendment shall also require to be ratified by the Legislatures of not less than one-half of the States ^{5***} by resolutions to that effect passed by those Legislatures

¹Subs. by the Constitution (Twenty-fourth Amendment) Act, 1971, s. 3, for "Procedure for the amendment of the Constitution".

²Ins. by s. 3, *ibid.*

³Art. 368 renumbered as cl. (2) thereof by s. 3, *ibid.*

⁴Subs. by s. 3, *ibid.*, for "it shall be presented to the President for his assent and upon such assent being given to the Bill."

(Part XX.—Amendment of the Constitution.—Art. 368.)

before the Bill making provision for such amendment is presented to the President for assent.

¹[(3) Nothing in article 13 shall apply to any amendment made under this article.]

²[(4) No amendment of this Constitution (including the provisions of Part III) made or purporting to have been made under this article [whether before or after the commencement of section 55 of the Constitution (Forty-second Amendment) Act, 1976] shall be called in question in any court on any ground.

(5) For the removal of doubts, it is hereby declared that there shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.]

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Article 13(4)

¹[(4) Nothing in this article shall apply to any amendment of this Constitution made under article 368.]

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Doctrine of Basic structure

1. Supremacy of constitution
2. Rule of law
3. Separation of powers
4. Federalism
5. Secularism
6. Judicial Review
7. Parliamentary Democracy
8. Republican form of government
9. Judicial Independence
10. The unity and integrity of the nation

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Critical analysis of Doctrine of Basic structure

1. No constitutional basis
2. Tyranny of the unelected
3. Violates Separation of powers
4. Very subjective

1. Seeks to preserve the basic constitutional identity
2. Been applied very sparingly by the courts
3. Some other constitutions have also adopted this doctrine

Previous Year Question

“Parliament’s power to amend the constitution is a limited power and it cannot be enlarged into absolute power”. In the light of this statement explain whether parliament under article 368 of the constitution can destroy the Basic structure of the constitution by expanding its amending power? (15 marks)

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Right to Equality

Right to Equality

Equality before law.

14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

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Right to Equality

Right to Equality

Equality before
law.

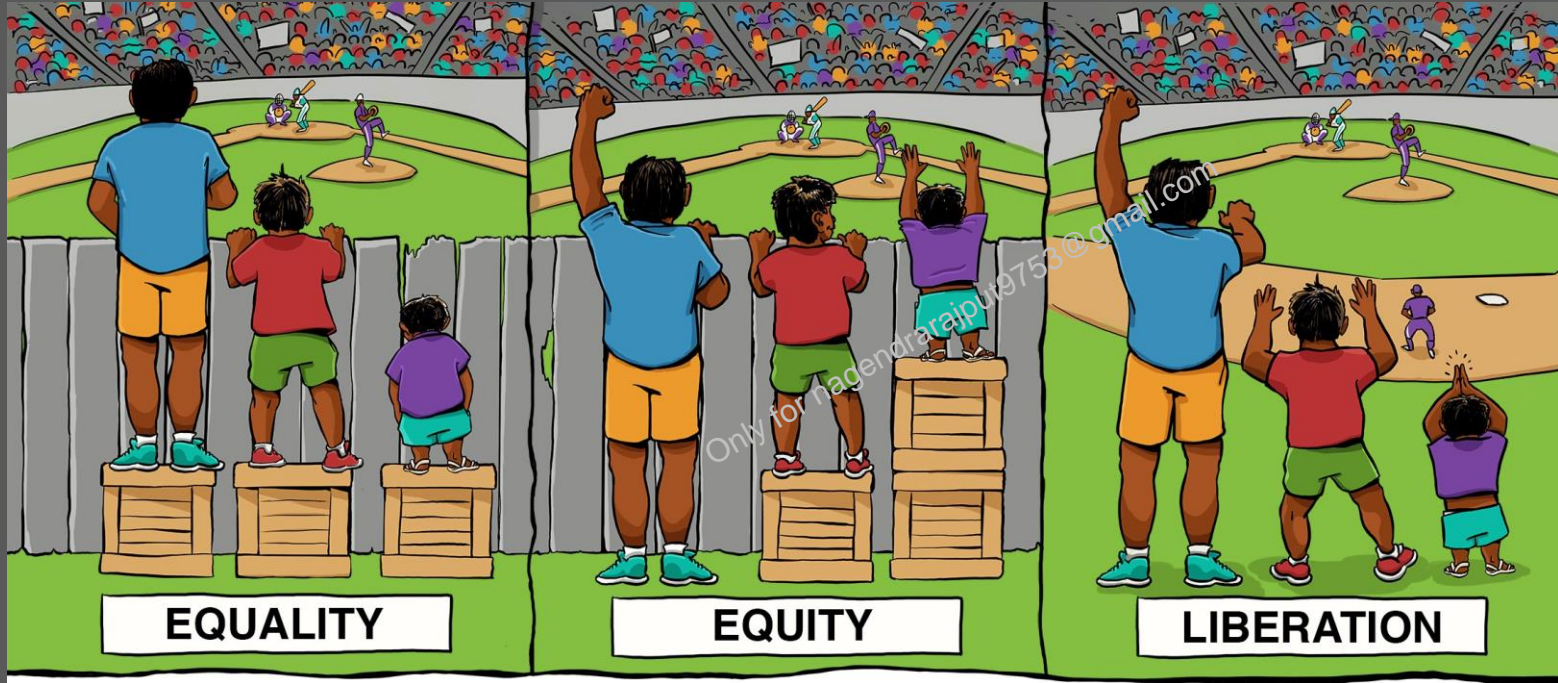
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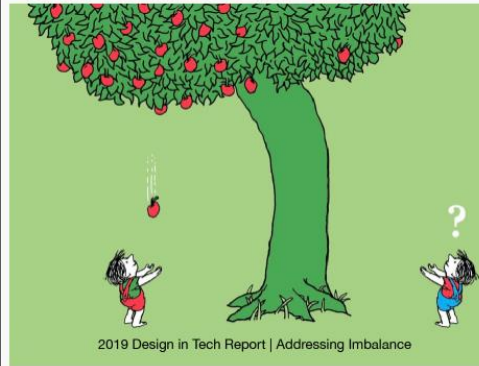
Right to Equality

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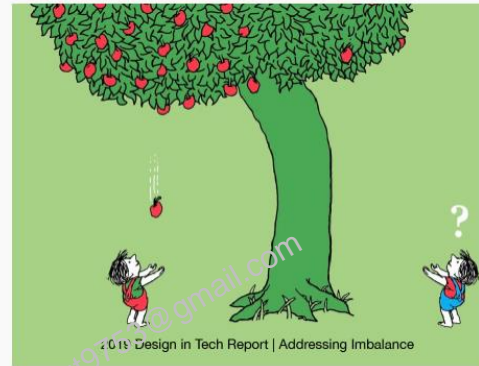
Right to Equality



Right to Equality



INEQUALITY



EQUALITY



EQUITY



JUSTICE

Right to Equality

Equity is a solution for addressing imbalanced social systems. Justice can take equity one step further by fixing the systems in a way that leads to long-term, sustainable, equitable access for generations to come.

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ARTICLE 15

15. (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2) No citizen shall, on grounds only of religion, race, caste, 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 places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

¹[(4) Nothing in this article or in clause (2) of article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.]

²[(5) Nothing in this article or in sub-clause (g) of clause (1) of article 19 shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes or the Scheduled Tribes 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

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

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ARTICLE 15

Article 15(6): Nothing in this article or sub-clause (g) of clause (1) of Article 19 or clause (2) of Article 29 shall prevent State from making:

(a) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5); and

(b) any special provision for the advancement of any economically weaker sections of citizens other than the classes mentioned in clauses (4) and (5) insofar as such special provisions relate to their admissions to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions referred to in clause (1) of Article 30, which in the case of reservation would be in addition to the existing reservations and subject to a maximum of ten per cent of the total seats in each category.

Explanation.— For the purpose of this article and Article 16, “economically weaker sections” shall be such as may be notified by the State from time to time on the basis of family income and other indicators of economic disadvantages.

ARTICLE 16

16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

Equality of opportunity in matters of public employment.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office

¹Added by the Constitution (First Amendment) Act, 1951, s. 2.

²Ins. by the Constitution (Ninety-third Amendment) Act, 2005, s. 2 (w.e.f. 20-1-2006).

(Part III.—Fundamental Rights.—Arts. 16—18.)

¹[under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.

(4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.

²[(4A) Nothing in this article shall prevent the State from making any provision for reservation ³[in matters of promotion, with consequential seniority, to any class] or classes of posts in the 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.]

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ARTICLE 16

THE CONSTITUTION OF INDIA

(Part III.—Fundamental Rights.—Arts. 16—18.)

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⁴[(4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year.]

(5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

17. "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.

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Court in Indira Sahwney case

“To conclude, though prima facie the list of Backward Classes which is under attack before us may be considered to be on the basis of caste, a closer examination will clearly show that it is only a description of the group following the particular occupations or professions, exhaustively referred to by the Commission. Even on the assumption that the list is based exclusively on caste, it is clear from the materials before the Commission and the reasons given by it in its report that the entire caste is socially and educationally backward and therefore their inclusion in the list of Backward Classes is warranted by Article 15(4). The groups mentioned therein have been included in the list of Backward classes as they satisfy the various tests, which have been laid down by this Court for ascertaining the social and educational backwardness of a class,”

Amendments made regarding reservations

What were the amendments?

77th Amendment: It introduced Clause 4A to the Constitution, empowering the state to make provisions for reservation in matters of promotion to SC/ST employees if the state feels they are not adequately represented.

81st Amendment: It introduced Clause 4B, which says unfilled SC/ST quota of a particular year, when carried forward to the next year, will be treated separately and not clubbed with the regular vacancies of that year to find out whether the total quota has breached the 50% limit set by the Supreme Court.

82nd Amendment: It inserted a proviso at the end of Article 335 to enable the state to make any provision for SC/STs “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”.

85th Amendment: It said reservation in the promotion can be applied with consequential seniority for the SC/ST employee.

ARTICLE 17

17. Abolition of Untouchability.—“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.

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ARTICLE 18

18. Abolition of titles.—(1) No title, not being a military or academic distinction, shall be conferred by the State.

(2) No citizen of India shall accept any title from any foreign State.

(3) No person who is not a citizen of India shall, while he holds any office of profit or trust under the State, accept without the consent of the President any title from any foreign State.

(4) No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, or office of any kind from or under any foreign State.



THANKS!

Any questions?