



# Part III

## Fundamental Rights

# 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  
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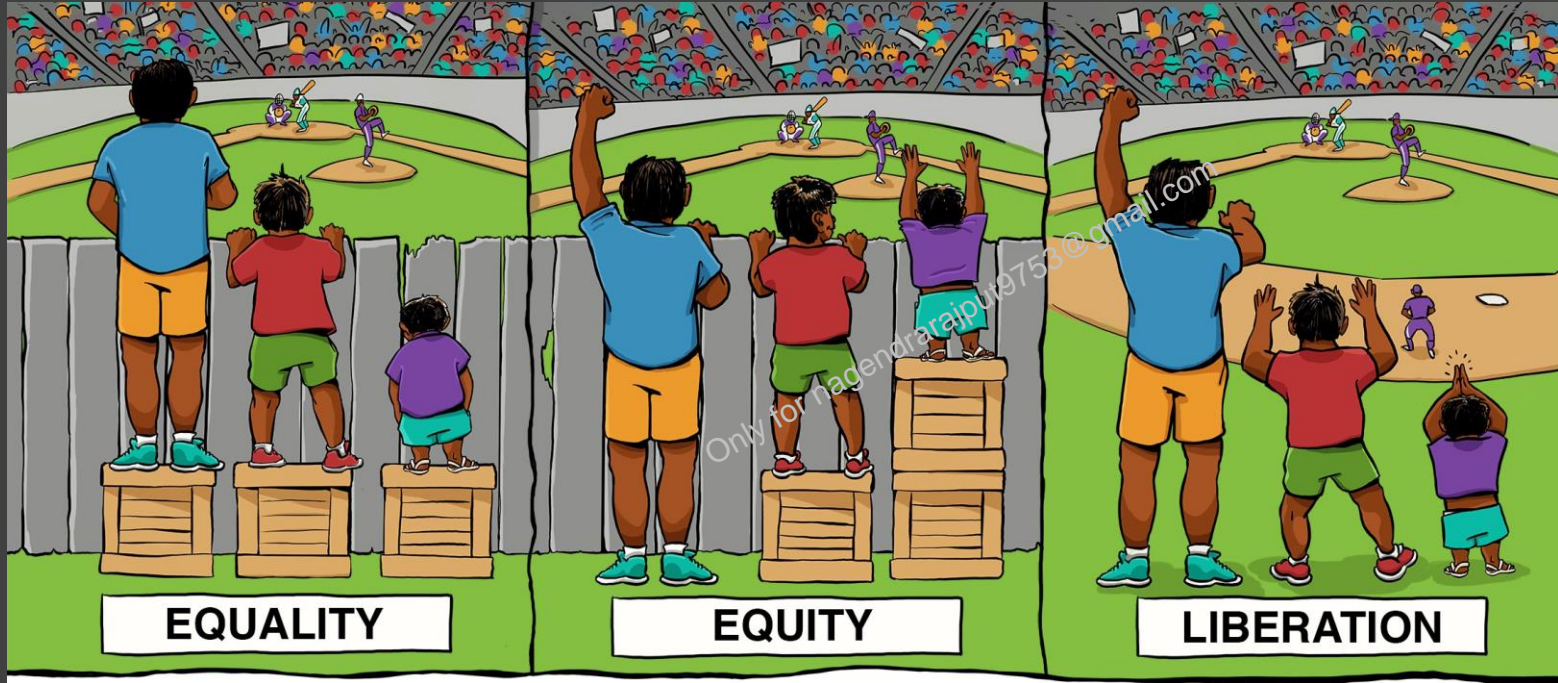
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# Right to Equality

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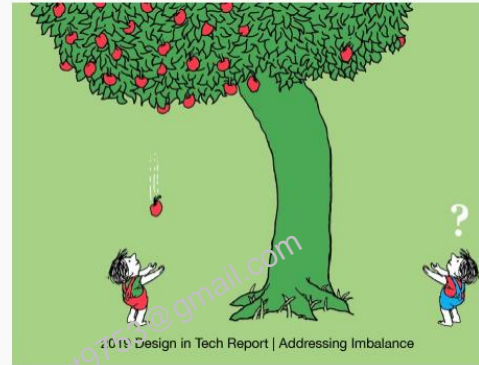
# Right to Equality



# 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.

<sup>1</sup>[(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.]

<sup>2</sup>[(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

<sup>1</sup>Added by the Constitution (First Amendment) Act, 1951, s. 2.

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

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

<sup>1</sup>[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.

<sup>2</sup>[(4A) Nothing in this article shall prevent the State from making any provision for reservation <sup>3</sup>[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.]

# ARTICLE 16

## THE CONSTITUTION OF INDIA

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

<sup>1</sup>[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.

<sup>2</sup>[(4A) Nothing in this article shall prevent the State from making any provision for reservation <sup>3</sup>[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.]

<sup>4</sup>[(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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ability.

# Mandal Commission

*In 1979, it was the Morarji Desai government which set up the Mandal Commission to identify socially or educationally backward classes to address caste discrimination. It was chaired by B.P. Mandal, who was once the Bihar chief minister. The Commission recommended that members of OBCs be given 27 per cent reservations for jobs under the Central government and public sector undertakings. This would take the total number of reservations for Scheduled Castes and Scheduled Tribes to 49 per cent.*

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# Mandal Commission

*The Mandal Commission used eleven social, economic, and educational indicators to determine backwardness within various castes. In its application, these criteria vary from State to State and even from region to region.*

*The classification was based on Social, Educational and Economic criteria (referred to A, B and C respectively) with decreasing order of importance.*

*This provides a 22 point system with social factors providing 12 points (3 x 4), educational factors 6 points (2 x 3) and economic factors 4 points (1 x 4). The cut off was 11 points and classes that were given 11 points or higher were designated as OBC and were eligible to avail of the network of benefits provided.*

# Mandal Commission

## Social

1. Castes that others perceive to be socially backward. In other words, castes that are backward in the perception of other people in society.
2. Castes that mainly depend on their livelihoods by hand. *Example: Manual/Daily wage labourer*
3. In cases such as rural areas where at least 25% of women and 10% of men above the state average are married below the age of 17. Whereas, in urban areas, in those cases where 10% of women and 5% of men married below the age of 17 is above the state average.
4. Castes where female employment is at least 25% higher than the state average.

## Educational

5. Castes in which the children in the age group 5-15 have never been to school is 25% higher than the state average.
6. If the drop-out (one who quits the school in the middle without passing) rate in the age group 5-15 years is at least 25% above the state average.
7. Castes where registration of matriculates is at least 25% lower than the state average.

# Mandal Commission

## Economic

8. Where the average value of family assets is at least 25% lower than the average value of the state.
9. The castes in which the number of families living in kaccha houses is 25% above the state average. Kaccha houses refer to thatched houses or those made up of mud/clay.
10. Castes where more than 50% of the households have a water source for drinking beyond half a kilometre. It refers to those families who travel more than half a kilometre for collecting drinking water.
11. The castes in which the families taking household consumption loans are 25% above the state average.





# 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.

## MANY STATES BREACHED CEILING



Reservation being extreme form of protective measure... should be confined to minority of seats. Even though the Constitution does not lay down any specific bar... the principle of balancing equality curtails reservation, of any manner, not to exceed 50%

—9-member SC bench on Nov 16, 1992 in Indra Sawhney judgment

➤ Since the 1992 order, several states have passed laws breaching 50% ceiling, including **TN, Maharashtra, Haryana, Telangana, Andhra, MP, UP, Rajasthan & Chhattisgarh**

➤ Many of these laws have either been stayed or are facing legal challenges

➤ SC was hearing challenge to Maharashtra govt's decision to extend quota to Marathas

# Case history

Salient points from the past verdicts which dealt with the application of creamy layer concept in reservation

■ **Nine-judge Bench in 1992 Indra Sawhney case:** SCs/STs are the most backward among backward classes. Once part of the Presidential List under Articles 341 & 342, there is no question of showing their backwardness again

■ **Five-judge Bench in 2006 M. Nagaraj case:** Quota benefits should go to the weakest of weak and not be snatched away by members of the class who are in the "top creamy layer"

■ **Five-judge Bench in 2018 Jarnail Singh case:** Creamy layer ensures that only the deserving among the SCs/STs get the benefits of reservation



## RESERVATION ISSUE

➤ Reservation policy applies same to any college/universities all over India

➤ Central Universities, AIIMS do have same SC/ST/OBC reservation policy

➤ Deemed to be universities don't have SC/ST/OBC reservation



➤ Some of them have minority (muslim, christian and jain) reservations

➤ They also have 15% quota for NRI students

➤ Medical students are demanding SC, ST and OBC reservations in Deemed universities



# 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.



"No one can make you feel inferior without your consent."

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# THANKS!

## Any questions?

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