

The right to equal protection and affirmative action policies

The Gravity of These Rights in the Indian Constitution

The Indian Constitution, adopted in the wake of a long struggle against colonialism and social oppression, places profound emphasis on the ideals of justice, equality, and human dignity. Among the fundamental rights it guarantees, the *right to equality* and the *principle of equal protection of laws* stand as cornerstones of the legal and moral order of the Republic. Coupled with this, the Constitution also acknowledges the deeply entrenched social and economic disparities in Indian society and seeks to remedy them through a carefully crafted framework of *affirmative action* or *positive discrimination*. These twin mechanisms — equal protection and affirmative action — together form the bedrock of India's commitment to substantive equality and social justice.

The right to equality is enshrined in **Articles 14 to 18** of the Constitution. Article 14 guarantees that "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 establishes two broad doctrines — *equality before law*, which is borrowed from the British legal system and implies the absence of any special privilege in favor of individuals, and *equal protection of laws*, which is based on the American model and implies the right to equal treatment in similar circumstances. These provisions are fundamental not just because they provide protection against discrimination, but because they underpin the broader democratic values of fairness, accountability, and human dignity.

However, the framers of the Constitution were acutely aware that formal equality — treating everyone the same — would not be sufficient to address centuries of caste-based oppression, economic backwardness, and systemic marginalisation. Therefore, the principle of equal protection was never meant to be blind to difference. Rather, it permits reasonable classification, provided it is based on intelligible differentia and bears a rational nexus with the objective sought to be achieved. This opens the constitutional door for affirmative action policies, which are essential for the realisation of *substantive equality* — a form of equality that seeks to create real opportunities by addressing structural disadvantages.

The most visible form of affirmative action in India is the *reservation system*, enshrined primarily in **Articles 15 and 16**. Article 15 prohibits discrimination on grounds of religion, race, caste, sex, or place of birth, but **Article 15(4)** and **15(5)** empower the State to make special provisions for the advancement of socially and educationally backward classes, including Scheduled Castes (SCs) and Scheduled Tribes (STs). Similarly, **Article 16(4)** allows for reservations in public employment for any backward class of citizens which, in the opinion of the State, is not adequately represented in public services.

These provisions are not exceptions to the right to equality but extensions of it. They are meant to correct historical wrongs and to create a level playing field in a society that remains

deeply stratified by caste, class, and gender. The gravity of these rights lies in their transformative potential — to move from mere formal equality to actual, meaningful equality.

The Indian judiciary has played a crucial role in interpreting and refining these rights. In **State of Kerala v. N.M. Thomas (1976)**, the Supreme Court held that affirmative action is integral to the principle of equality itself. The Court recognised that equality does not mean treating unequals equally, but rather recognising and addressing existing disadvantages. In the landmark **Indra Sawhney v. Union of India (1992)** judgment, also known as the Mandal Commission case, the Court upheld 27% reservation for Other Backward Classes (OBCs) in central government jobs but set limits — such as the 50% ceiling on total reservations and the exclusion of the 'creamy layer' (the wealthier among backward classes). These judicial guardrails seek to maintain the delicate balance between the need for inclusion and the imperative of merit.

Another significant judgment came in **Ashoka Kumar Thakur v. Union of India (2008)**, which upheld the constitutional validity of 27% reservation for OBCs in central educational institutions under Article 15(5). Most recently, the **103rd Constitutional Amendment Act, 2019**, introduced a new dimension to affirmative action by allowing for **10% reservation for Economically Weaker Sections (EWS)** of citizens not covered under existing quotas, based solely on economic criteria. This was upheld by the Supreme Court in **Janhit Abhiyan v. Union of India (2022)**, with the Court observing that affirmative action need not be restricted only to social and educational backwardness.

These developments highlight how affirmative action has evolved from being a mechanism primarily for SCs and STs to a broader tool for addressing various forms of deprivation. Yet, they also reflect the complexities and tensions involved. While reservations have unquestionably improved access to education and public employment for many disadvantaged communities, they have also generated debates about merit, reverse discrimination, political populism, and the need for periodic review of such policies. The debate is further complicated by the challenge of measuring backwardness and the need to ensure that the benefits of reservations reach the genuinely needy.

Nevertheless, the normative importance of affirmative action policies, as grounded in the right to equal protection, remains undeniable. They are instruments not merely of social justice but of national integration, inclusion, and constitutional morality. The Indian Constitution envisages a society where individual merit can flourish only when the structural barriers to opportunity are first dismantled. It sees the State not as a neutral bystander but as an active agent of change.

Moreover, the gravity of these rights goes beyond legal text and policy instruments. They reflect a national commitment to the values of fraternity, dignity, and human development. They influence the nature of our democracy, the inclusiveness of our institutions, and the quality of our social cohesion. The impact of these rights is visible not just in statistics of

representation but in the growing self-confidence, political assertion, and socio-economic mobility of historically disadvantaged groups.

The right to equal protection and the implementation of affirmative action policies occupy a central and indispensable position in the Indian constitutional framework. They represent a deliberate and principled attempt to reconcile liberty with justice, and merit with equity. Far from being antithetical to equality, affirmative action is its truest expression in an unequal society. The challenge for the Indian State is to continue refining these policies through evidence, dialogue, and constitutional values, ensuring that they remain effective, fair, and responsive to the changing dynamics of social disadvantage. Only then can the promise of equality — not just in law, but in life — be fully realised.

The **Right to Equality** and **Affirmative Action policies** in the Indian Constitution are detailed in **Articles 14 to 18**, with special focus on **Articles 14, 15, and 16**. Here's what these rights **specifically state**, word-for-word or in precise legal terms, with explanations of their legal scope and intent:

1. Article 14 – Equality before Law and Equal Protection of Laws

Text:

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

Explanation:

- **Equality before the law** means no one is above the law, and all individuals are subject to the same laws in the same manner.
- **Equal protection of laws** means that individuals in similar situations must be treated similarly by the law, but allows for reasonable classification (e.g., treating unequals unequally when justified).

2. Article 15 – Prohibition of Discrimination on Certain Grounds

Article

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."

Article

15(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."

Affirmative Action Exceptions:

- **Article 15(3):** *"Nothing in this article shall prevent the State from making any special provision for women and children."*
- **Article 15(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."*
- **Article 15(5):** *"Nothing... shall prevent the State from making any special provision, by law, for the advancement of any socially and educationally backward classes... or for the Scheduled Castes or the Scheduled Tribes in relation to their admission to educational institutions..."*
- **Article 15(6) [Inserted by the 103rd Amendment Act, 2019]:** Allows **10% reservation** for *Economically Weaker Sections (EWS)* in educational institutions, excluding SC/ST/OBC categories.

3. Article 16 – Equality of Opportunity in Public Employment

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

Article **16(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."

Affirmative Action Exceptions:

- **Article 16(3):** Allows Parliament to make residence-based requirements in State-level public employment.
- **Article 16(4):** *"Nothing... shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State."*
- **Article 16(4A):** Special provision for reservation in promotions for SCs/STs.

- **Article 16(6) [Inserted by the 103rd Amendment Act, 2019]:** Allows **10% reservation for EWS** in government jobs, similar to Article 15(6).

4. Article 17 – Abolition of Untouchability

Text:

"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."

Explanation:

- This article is absolute, with no exceptions.
- It is enforced by laws such as the **Protection of Civil Rights Act, 1955**, and the **Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989**.

5. Article 18 – Abolition of Titles

Text (in brief):

- Abolishes the conferment of titles by the State (except military or academic distinctions).
- Indian citizens are prohibited from accepting any titles from foreign states.

Summary of What These Rights Specifically Provide:

- **Universal Legal Equality (Art. 14):** Everyone is equal before the law, but the State may make classifications for equity.
- **Ban on Discrimination (Art. 15(1)-(2)):** No discrimination by the State or in public places based on religion, race, caste, sex, or place of birth.
- **Special Provisions Allowed (Art. 15(3)-(6)):** The State can make reservations or special provisions for women, children, SCs, STs, OBCs, and EWS.
- **Equal Employment Opportunities (Art. 16(1)-(2)):** Everyone has a right to equal opportunity in government employment.
- **Permissible Job Reservations (Art. 16(4)-(6)):** Allows for reservations in jobs and promotions for backward and underrepresented communities, and now also for EWS.
- **Ban on Untouchability (Art. 17):** Absolute and enforceable by law.

- **Ban on Hereditary Titles (Art. 18):** Ensures social equality and democratic ethos.

These articles together form the *constitutional architecture of equality*, and the affirmative action clauses within them provide the legal framework for reservations and other supportive measures. The drafters of the Constitution carefully balanced the **universal promise of equal treatment** with the **practical necessity of upliftment and corrective justice** for communities that had suffered social and institutional exclusion.

The right to equal protection and the affirmative action provisions embedded in the Indian Constitution are not merely legal guarantees; they are reflections of a deep-rooted aspiration to create a fair, just, and inclusive society. India, as a nation, emerged from a colonial past and a deeply hierarchical social structure marked by centuries of caste-based discrimination, gender inequality, economic disparities, and regional imbalances. The framers of the Constitution recognized that formal equality alone could not rectify these historical injustices. Thus, they designed a legal framework that balances the principle of equal treatment with the need for positive discrimination to uplift disadvantaged communities.

Articles 14, 15, 16, 17, and 18 collectively serve as the foundation for the nation's commitment to equality. Article 14 assures every person of equality before the law and equal protection of the laws, which sets a universal standard. Articles 15 and 16 take this principle further by not only prohibiting discrimination but also empowering the State to take proactive measures to ensure equity. This includes reservations in education and public employment for Scheduled Castes (SCs), Scheduled Tribes (STs), Other Backward Classes (OBCs), and, more recently, Economically Weaker Sections (EWS). Article 17 abolishes untouchability — a social evil that entrenched inequality — with absolute and non-negotiable force, while Article 18 eliminates hereditary titles that imply artificial social hierarchies.

The purpose of these rights is to promote **substantive equality**, not just formal or theoretical equality. Substantive equality acknowledges that true fairness can only be achieved when we recognize and address historical disadvantages and unequal starting points. In this light, affirmative action policies are not an exception to equality but a practical expression of it. They represent the Indian State's commitment to social transformation and inclusive growth by providing access to education, employment, and political representation to those who were historically excluded.

However, the implementation of these rights and policies is not without challenges. The reservation system, while successful in improving representation of marginalized groups, has often sparked debate over meritocracy, reverse discrimination, and the need for periodic review. There are also concerns about political misuse, lack of intersectional analysis (such as the compounding disadvantages faced by Dalit women), and the exclusion of truly needy individuals due to improper targeting or the failure to identify the “creamy layer.”

Despite these issues, the constitutional vision remains clear and relevant. Equality in India is not about erasing differences but about ensuring that differences do not become barriers to opportunity. The strength of Indian democracy lies in its ability to evolve these provisions through judicial interpretation, legislative reform, and public debate. As the country continues to grow and modernize, the importance of these rights increases — not just as constitutional promises but as societal goals. Upholding the spirit of Articles 14 to 18 means fostering dignity, inclusion, and justice for every citizen. It is a continuous journey toward a society where equality is not merely declared but meaningfully experienced by all.