

# **Right to Equality & Compensatory Discrimination under Indian Constitution**

**-Dr.G.B.Reddy  
Faculty, Department of Law  
Osmania University,Hyderabad-500 007  
E-Mail:gbredlaw@gmail.com**

# The India which we inherited

- Divided and compartmentalized Society
- Caste system and its evils
- Discrimination in all fields
- Dominance of few sections
- Backwardness-Social, Economic, educational and political
- Many disadvantaged sections

# Right to Equality



- Meaning
- Purpose
- Historical perspectives
- Position in USA
- Position in India-past and present
- Art-14- Equality before Law & Equal Protection of Laws
- Applicability- to all persons

# Dimensions of Equality

- Equality – not absolute & equality among equals
- Doctrine of Reasonable Classification - *Intelligible differentia* and *Reasonable nexus*
- Rule against Arbitrariness
- Doctrine of Legitimate Expectation
- Gender Equality and means of achieving it  
(National Legal Services Authority vs Union of India 15/04/2014 ) &

# Removal of Discrimination- Constitutional Scheme

- **Preamble – Equality of Status and opportunities**
- **Right to equality – Art.14**
- **Prohibition of Discrimination by State generally – Art.15(1)**
- **Prohibition of Discrimination by State in matter of access to and usage of public places - Art.15(2)**
- **Equality of opportunity in public employment – Art.16(1)**
- **Prohibition of Discrimination in public employment – Art.16(2)**
- **Abolition of untouchability Art.17**
- **Abolition of titles Art.18**
- **Exceptions: Art.361**

# Affirmative Action



- **Affirmative action** -describes many policies aimed at a historically socio-politically non-dominant groups
- Intended to promote its access to education or employment.
- Motivation for affirmative action -to redress negative effects of actual or perceived, past or current discrimination
- Serves to encourage public institutions such as universities, hospitals and police forces to be more representative of the populations they serve

# Compensatory Discrimination & Protective Discrimination

- Spl. Provisions for w/m & children- **Art.15(3)**
- Spl. Provisions for advancement of SEBCs, SC & ST -**Art.15(4)**
- Reservations for SEBCs, SC & ST in educational institutions - **Art.15(5)**
- Discrimination on ground of residence in public employment - **Art.16(3)**
- Reservation for BCs - **Art.16(4)**
- Reservation in promotions - **Art.16(4-A)**
- **No ceiling on quantum of reservations - Art.16(4-B)**
- **Discrimination in religious offices - Art 16(5)**

# Beneficiaries of Compensatory and Protective Discrimination

- Of Protective Discrimination – Women, Children, Physically Challenged, Displaced persons, Victims of pollution etc
- Of Compensatory Discrimination - SCs, STs, SEBC/OBCs





# Areas of Discrimination

- Education
- Employment
- Legislatures
- Government Welfare Schemes etc

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# Forms

- Reservations
- Preferences
- Financial Help
- Housing
- Fee waiver/exemption/concession
- Lowering minimum qualifying marks
- Exemption from departmental tests etc

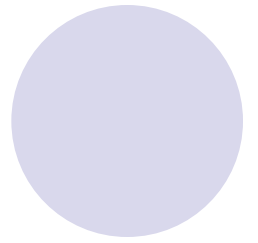
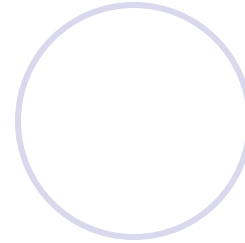
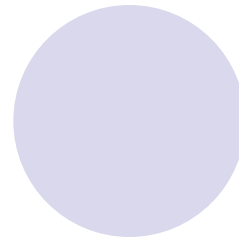
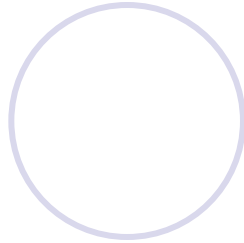
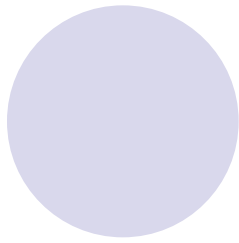
# Contentious issues



- Identification of Backwardness-Role of Caste or Class?
- Duration & Extent [ Width] of Reservation
- Entitlement to benefits
- Carry Forward Rule
- Reservations in Promotions
- Inter-caste marriages and impact
- Creamy Layer
- Merit v. Social Justice

# Leading Cases

- From Champakam Dorairajan to Mandal case
- Mandal Commission and thereafter
- Champakam , AIR 1951 SC 226
- M.R.Balaji v.state of Mysore AIR 1963 SC 649
- Devadasan V. UoI AIR 1964 SC 179
- K.C.Vasanth Kumar v.State of Karnataka AIR 1985 SC
- Indra Sawney v.UoI AIR 1993 Sc 477



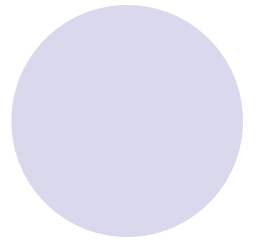
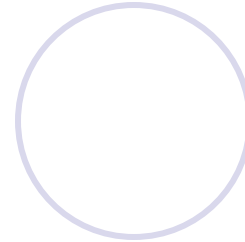
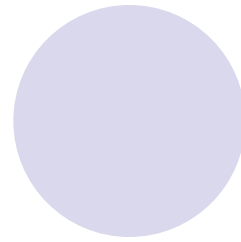
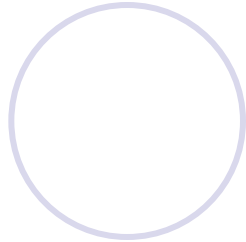
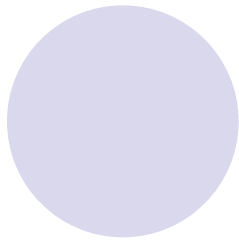
- **Valsamma Paul v.Cochin University** AIR SC 1996 1011  
Syrian Catholic (a forward class), having married a Latin Catholic -Acquisition of the Status of Scheduled Caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution.
- Para 12 - It would thus be clear that there are attempts of transplantation of forward classes to backward classes. Instead of integrated forward march, it is a retrograde reverse march from forward to backward status to claim reservations.

# Leading Cases

- **Sobha Hymavathi Devi vs Setti Gangadhara Swamy & Ors. on 28 January, 2005** [**‘12. Before we part with this case, we wish to express our dismay at the extent to which a person could go to sustain her seat in the legislature. The appellant brands her five siblings and herself as bastards, and her mother a concubine. We desist from making any further observations on this aspect.’** ]

# Leading Cases

- Dr.Preeti Sreevastava v.State of MP  
(1999) 7 SCC 120
- M.Nagaraju v.Union of India  
(2006) 6 SCC 212-Constitutional Validity of Art.16 (4-A),(4-B) & 335 as amended –upheld
- Ashoka Kumar Thakur vs Union Of India [ 10 April, 2008 ]– 93<sup>rd</sup> Constitutional amendment & Art.15(5) –upheld- "Creamy Layer" is to be excluded from SEBCs



- **Suresh Kumar Koushal v. NAZ Foundation** (2014,SC)-held that Section 377 IPC does not suffer from the vice of unconstitutionality and the declaration made by the Division Bench of the High court is legally unsustainable.
- Treating TGs as ‘third gender’ for the purposes of safeguarding and enforcing appropriately their rights guaranteed under the Constitution **NATIONAL LEGAL SER. AUTH. V. UNION OF INDIA (2014,SC)**



# Leading Cases

- **Reservations for Muslims- B. Archana Reddy And Ors. vs State Of A.P [A.P.High Court judgment dated 7 November, 2005] - A.P. Reservation of seats in the Educational Institutions and of appointments or posts in the Public Services under the State to Muslim Community Ordinance, 2005 (A.P. Ordinance No. 13 of 2005) –held unconstitutional and void**
- **The matter pending before Supreme Court- However State Government permitted to reserve seats/jobs for Muslims identified as BCs under the revised criterion**

# Conclusion



- Ensure Equality
- Make individual not the caste/class – unit for Compensatory Discrimination
- Don't perpetuate the dominance of caste
- Put a moratorium on reservations at least at some juncture
- Follow the pyramidal model
- Let us not let the vested interests cause irreparable damage to our social fabric