UNIT – III

Protective Discrimination & Right to Freedom

Articles 15 • 16 • 17 • 19

Explanatory Lecture Slides with Landmark Case Laws

LEARNING OBJECTIVES

Topics Covered in Unit-III

01

Protective Discrimination & Social Justice

Articles 15 & 16 • Judicial Trends • Article 17 Untouchability

02

Right to Freedom

Speech & Expression • Assembly • Association • Movement • Residence • Profession

03

Reasonable Restrictions

Article 19(2) to 19(6) • Landmark Cases • Golden Triangle

Prohibition of Discrimination

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.

Art. 15(2): No citizen shall be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels, places of public entertainment or use of wells, tanks, roads etc.

Art. 15(3): Special provision for women and children is permitted (protective discrimination).

Art. 15(4): Special provisions for advancement of socially and educationally backward classes or SCs/STs (added by 1st Amendment).

Art. 15(5) & 15(6): Reservations in educational institutions (including private) and EWS reservation (103rd Amendment).

Positive Discrimination for Social Justice

Protective discrimination (also called affirmative action or positive discrimination) allows the State to make special provisions for disadvantaged groups to achieve substantive equality. It is an exception to the formal equality rule under Articles 14, 15 and 16.

Purpose

To uplift socially and educationally backward classes and compensate for historical injustice.

Constitutional Basis

Articles 15(3), 15(4), 15(5), 15(6), 16(4), 16(4A), 16(4B).

Limits

Must satisfy reasonable classification; cannot exceed 50% ceiling (generally); creamy layer exclusion.

Judicial View

Substantive equality over formal equality – Indra Sawhney, M. Nagaraj, Jarnail Singh.

01 • ARTICLE 16

Equality of Opportunity in Public Employment

Art. 16(1) Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

Art. 16(2) No discrimination on grounds only of religion, race, caste, sex, descent, place of birth, residence.

Art. 16(3) Parliament may prescribe residence requirement for certain posts.

Art. 16(4) Reservation of appointments/posts in favour of any backward class not adequately represented in State services.

Art. 16(4A) Reservation in promotions for SCs/STs (77th Amendment).

Art. 16(4B) Carry-forward of unfilled reserved vacancies (81st Amendment).

01 • LANDMARK CASE

Indra Sawhney v. Union of India (1992)

Popularly known as the Mandal Commission case. A 9-Judge Bench examined the constitutional validity of 27% reservation for Other Backward Classes (OBCs) in central government services.

50% Ceiling

Total reservations should not exceed 50% (except in extraordinary situations).

Creamy Layer

Advanced sections (creamy layer) among OBCs must be excluded from reservation benefits.

No Reservation in Promotions

Article 16(4) does not permit reservation in promotions (later overruled by 77th Amendment + M. Nagaraj).

Caste as Indicator

Caste can be used as a criterion to identify social and educational backwardness.

Backward Classes

OBCs are distinct from SCs/STs; identification must be based on social and educational backwardness.

Impact

Foundation of modern reservation jurisprudence in India.

Social Justice – Recent Developments

M. Nagaraj (2006)
Upheld Art. 16(4A) but required quantifiable data on backwardness, inadequacy of representation and overall efficiency.

Jarnail Singh (2018)
Creamy layer principle applies to SCs/STs in promotions; quantifiable data still needed.

EWS Reservation (2022)
103rd Amendment upheld; 10% EWS quota does not violate basic structure (5:4 majority).

Sub-classification
Courts have allowed sub-classification within SCs/STs for more equitable distribution of benefits.

Vertical vs Horizontal
Vertical reservations (SC/ST/OBC) and horizontal (women, PwD, etc.) operate differently.

Current Focus
Balancing social justice with merit, efficiency and the 50% ceiling in light of changing demographics.

01 • ARTICLE 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.

Nature

Absolute prohibition – no reasonable restrictions. Applies to both State and private individuals.

Legislation

Protection of Civil Rights Act, 1955 (earlier Untouchability Offences Act) + SC/ST (Prevention of Atrocities) Act, 1989.

Key Case

People’s Union for Democratic Rights v. Union of India (1982) – State duty to enforce Art. 17 against private persons.

Appa Balu Ingale

Supreme Court described untouchability as an indirect form of slavery and extension of the caste system.

Article 19 – Six Freedoms

19(1)(a)

Speech & Expression

Includes press, information, silence, commercial speech

19(1)(b)

Assembly

Peaceful assembly without arms

19(1)(c)

Association / Union

Form associations or unions or co-operative societies

19(1)(d)

Movement

Move freely throughout the territory of India

19(1)(e)

Residence

Reside and settle in any part of the territory of India

19(1)(g)

Profession / Trade

Practise any profession, or carry on any occupation, trade or business

Article 19(1)(a) – Dimensions & Cases

Freedom of speech and expression includes freedom of the press, right to information, right to silence, commercial speech, and the right to criticise the government. It is the foundation of democracy.

Romesh Thappar (1950)

Freedom of speech includes freedom of circulation of ideas. Pre-censorship of newspapers struck down.

Indian Express (1985)

Freedom of press is essential for democracy; advertisements are also protected speech.

Shreya Singhal (2015)

Section 66A of IT Act struck down as vague and overbroad; chilling effect on free speech.

Kaushal Kishor (2023)

Fundamental rights can be enforced horizontally against non-State actors in certain situations.

Articles 19(1)(b) & 19(1)(c)

Freedom of Assembly

Art. 19(1)(b)

Right to assemble peaceably and without arms.

Restrictions under Art. 19(3): sovereignty & integrity of India, public order.

Key Case: Himat Lal K. Shah v. Commissioner of Police (1973) – right to hold public meetings is part of freedom of assembly.

Section 144 CrPC orders must be reasonable and not blanket bans.

Freedom of Association

Art. 19(1)(c)

Right to form associations, unions or co-operative societies.

Restrictions under Art. 19(4): sovereignty & integrity, public order, morality.

Key Cases: Damyanti Naranga (1971) – right includes right to continue association with chosen members.

Does not include right to recognition or right to strike as a fundamental right.

Movement • Residence • Profession

Freedom of Movement – 19(1)(d)

Right to move freely throughout the territory of India. Restrictions under 19(5) in the interests of general public or for protection of Scheduled Tribes. Externment orders must be reasonable.

Freedom of Residence – 19(1)(e)

Right to reside and settle in any part of India. Linked with movement. Can be restricted for public interest or protection of tribal areas (e.g., Inner Line Permit in some North-Eastern states).

Freedom of Profession – 19(1)(g)

Right to practise any profession, or to carry on any occupation, trade or business. Does not include right to carry on a profession that is inherently dangerous or immoral. State can impose reasonable restrictions and create monopolies (Art. 19(6)).

Article 19(2) to 19(6) – Grounds of Restriction

Restrictions must be reasonable, not arbitrary or excessive. Courts apply the test of proportionality and examine whether the restriction has a direct and proximate nexus with the permitted ground.

19(2) (Speech): Sovereignty & integrity, security of State, friendly relations with foreign States, public order, decency or morality, contempt of court, defamation, incitement to offence

19(3) (Assembly): Sovereignty & integrity of India, public order

19(4) (Association): Sovereignty & integrity, public order, morality

19(5) (Movement & Residence): Interests of general public, protection of interests of any Scheduled Tribe

19(6) (Profession): Interests of general public; professional/technical qualifications; State monopoly

Articles 14, 19 & 21 – Interlinked Rights

In Maneka Gandhi v. Union of India (1978), the Supreme Court held that Articles 14, 19 and 21 form a golden triangle. Any law or action that restricts personal liberty (Art. 21) must also satisfy the tests of equality (Art. 14) and the freedoms under Art. 19.

1

Article 14

Equality before law and equal protection – non-arbitrariness

2

Article 19

Six fundamental freedoms with reasonable restrictions

3

Article 21

Protection of life and personal liberty – expanded to include dignity, privacy, livelihood

QUICK RECAP

Key Takeaways from Unit-III

Protective Discrimination

Arts 15 & 16 enable special provisions for backward classes, women, EWS. Indra Sawhney fixed 50% ceiling & creamy layer. Recent trends focus on quantifiable data and sub-classification.

Article 17

Untouchability abolished absolutely. Practice is a criminal offence. State has positive duty to enforce it against private persons as well.

Right to Freedom (Art 19)

Six freedoms with specific reasonable restrictions. Speech & expression is the most expansive. Shreya Singhal is a landmark free-speech judgment.

Golden Triangle

Arts 14, 19 & 21 are interlinked. Any restriction on liberty must satisfy equality and reasonableness tests (Maneka Gandhi).

Thank You

“The Constitution is not a mere lawyers’ document, it is a vehicle of life, and its spirit is always the spirit of the age.”

— Dr. B.R. Ambedkar