



The need for an anti-discrimination law

Context:

- In the backdrop of the ongoing **anti-racism protests in the U.S.**, the author analyzes the challenges in India.

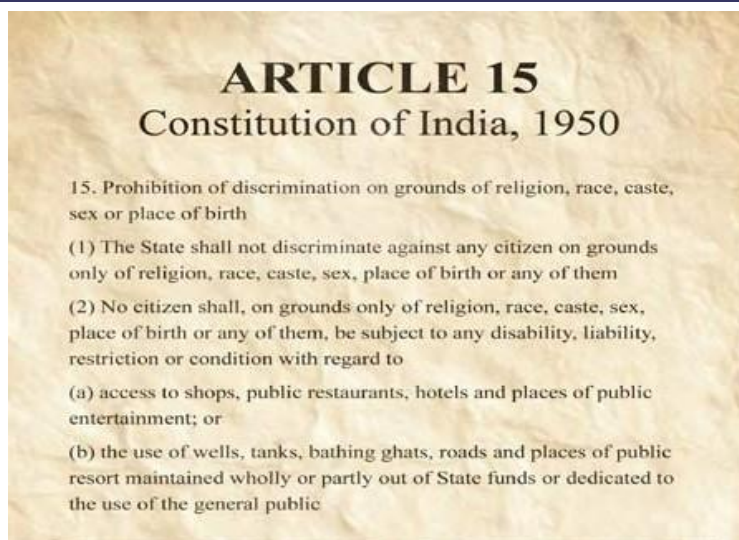
What is the scenario in India?

- The author argues that even after more than 70 years of independence, Indian society remains rife with **structural discrimination and prejudice**.
- The inequality problem in India is only exacerbated by historically ingrained forms of discrimination, along the lines of **caste, class, gender, and religion** among other things.
- These prejudices, which pervade every aspect of life, from access to basic goods, to education and employment, are sometimes manifest. But, on other occasions, the discrimination is indirect and even unintended.
- Both direct and indirect forms of discrimination go against **India's constitutional vision of equality**.

What are the major concerns?

Discrimination in the private realm:

- While there are ample provisions to avoid discrimination by the state, entry barriers to goods such as housing, schools and employment tend to function in the **realm of private contracts** where there is the possibility of inequality in treatment.
- Civil liberties are just as capable of being threatened by acts of private individuals as they are by the state.
- For example, when a person refuses to lease his/her property to another based on the customer's faith, such a refusal would run directly counter to the guarantee of equality.





Counter-arguments against equality:

- **Article 15(2)** stipulates that citizens shall not on grounds only of religion, race, caste, sex, or place of birth be denied access to shops, public restaurants, hotels and places of public entertainment. The above provision intends to place restrictions on any economic activity that sought to exclude specific groups.
- Despite constitutional provisions against inequality in the realm of private contracts, it has been observed that when case of discrimination is brought before the judiciary, the party that discriminates claims that he/she possesses a liberty to do so, that he must be free to act according to his own sense of conscience. The argument often put forward is the **rights of persons to associate with others**, often to the exclusion of certain groups.
- The Supreme Court, in 2005, in **Zoroastrian Cooperative Housing Society vs District Registrar Co-operative Societies (Urban) and Others**, had ruled in favour of a by-law of a Parsi housing society that prohibited the sale of property to non-Parsis. The Court held that the right to forbid such a sale was intrinsic in the Parsis' fundamental right to associate with each other.

Lack of legislation:

- India is unique among democracies in that a **constitutional right to equality is not supported by comprehensive legislation**.
- In South Africa, for example, a constitutional guarantee is augmented by an all-encompassing law which prohibits unfair discrimination not only by the government but also by private organisations and individuals.

Conclusion:

- Discrimination can take different forms. There is a need to **acknowledge** this and take corrective action.
- There is a need for a **suitable law that can address the culture of discrimination**.
- Though a statute only will not help resolve our systemic biases, it can be a step forward in addressing the deeply engrained prejudices and discrimination in our society.