

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed

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THE 3 C'S OF EQUALITY - CASTE, CENSUS AND CONSTITUTION UNDER PIL SCRUTINY

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ABSTRACT

This paper investigates whether caste can serve as the definitive constitutional yardstick for backwardness under Article 15 or if jurisprudence has rendered such singular categories obsolete. While Public Interest Litigation (PIL) promised to bridge the gap between constitutional ideals and lived realities, decades of Article 15 litigation reveal a deep structural stagnation, exposing a "paternalism paradox" where the Court oscillates between treating caste as an historical truth and demanding rigorous statistical validation. As a fresh caste census looms, this inquiry moves beyond academic speculation to confront whether caste will be reaffirmed as a self-evident historical wrong or reduced to a metric that marginalized communities must constantly re-prove.

INTRODUCTION

As India prepares for its first caste-enumerated census in nearly a century, the old constitutional question resurfaces with a new urgency. Can caste singlehandedly serve as the constitutional yardstick of backwardness under Article 15 or has the Court's jurisprudence outgrown the categories it once relied upon?

The democratization of justice through PIL sought to dismantle India's 'graded inequality'¹, yet a central paradox persists, whether the Court is advancing substantive equality under Article 15 or merely producing 'symbolic victories' that fail to disrupt entrenched structures of discrimination.

The discussions around PIL as a vehicle of social justice, aimed at reaching those in need, are closely linked to the enforcement of equality under Article 15. Yet, despite sustained judicial perseverance², significant gaps in implementation continue to limit its effectiveness. This

¹ Upendra Baxi, 'Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India' (1985) 4 Third World Legal Studies 107.

² SP Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (2nd edn, OUP 2003) 195–

study, therefore, attempts to trace the root causes of this phenomenon and evaluate whether the outcomes it produces hold relevance in lived reality. The key findings of this study identify that, although PIL, developed through the constitutional remedies under Articles 32 and 226, has emerged as an indispensable mechanism for enforcing Article 15, its impactful conclusion still remains beyond the practical accessibility of the have-nots. Even societal adaptation remains gradual, due to inconsistent reasoning, stereotypical mindsets, and paternalistic undertones as the justice-on-paper remains largely symbolic. Adopting a doctrinal method based on judicial analysis, the paper examines *Article 15 and the role of PIL* evaluating its definitions, scope, effectiveness, broader implications and loopholes that are criticised more often, but rarely talked about.

From Constitutional Promise to Practical Access: Article 15 and the Emergence of PIL

The mere existence of a right does not ensure its accessibility. Beholding the title of the “world’s bulkiest constitution”, our constitutional framework, though ambitious in its design, the practical execution of the esoteric theories it contains, are truly compromised. One such instance can be traced to Article 15, where the promise of preserving the dignity of the disadvantaged community is made, by decreeing non-discrimination. It exemplifies the broader mandate of equality set forth in Article 14.

The inception of Article 15, represented a radical departure from the colonial order, seeking to abolish the deep-seated graded inequality in the contemporary Indian society, through the prolonged struggles of Dr. B.R Ambedkar.³

Embedded within PART III - Fundamental Rights of the Indian Constitution, it outlaws the state from discriminating against the citizens on the grounds of religion, race, caste, sex or place of birth.⁴ However, for the three periodical decades of the republic, the law remained responsive only to those with financial and social capital to navigate byzantine bureaucracy, leaving the marginalised with little to no justice.

It consists of four distinctive clauses that state affirmative actions and forbid discrimination in

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³ Constituent Assembly Debates, vol VII (6 December 1948); Granville Austin, ‘The Constitution was to foster the achievement of many goals. Transcendent among them was that of social revolution’ *The Indian Constitution: Cornerstone of a Nation* (Oxford University Press 1966) xi.

⁴ Constitution of India 1950, art 15.

folds.

Article 15(1) implies a general prohibition of discrimination which states, ‘No citizen shall be discriminated against on the grounds of religion, race, caste, sex or place of birth.

Article 15(2) pointed out societal discrimination in access to public spaces. Guaranteed access to public places, restaurants, markets and public wells while prohibiting discrimination enforced by private entities managing these spaces is designed to eliminate horizontal discrimination and to promote social equality.

Article 15(3) allows the state to step in with tailored rules to protect women and children who are struggling to get a fair and square start, aiming towards substantive justice. This progressive intent allows for differential treatment to achieve substantive equality, acknowledging that formal equality somehow falls short.⁵

Article 15(4) attempts to bridge the gap of inequality, by providing necessary reservations for socially and educationally backward classes, ST, SC’s, OBC’s through the first amendment of 1951.⁶ Likewise in clause 3, the prohibition of discrimination and enabling positive measures are optimum performances to bring about substantive equality.

To exercise the given fundamental right, a medium was established for societal injustices to be addressed by concerned individuals and communities on behalf of the whole. This is **Public Interest Litigation**⁷, designed to let citizens seek remedies and obtain redressal for grievances arising from the miscarriage of justice. The role of PIL in the context of Article 15, is not to mediate a dispute between parties, but to ultimately preserve the rights of a person or group of persons, who have been stripped of their dignity, violated, exploited or oppressed by the biases of the system. The role of Judiciary comes to light, as the guardian of the constitution, intervening where executive or legislative action or inaction results in constitutional violations. The PIL mechanism activates judicial activism, by providing a liberal interpretation of the constitution and establishing the “rule of the law” by expanding the narrowed edges of suitable justice. While PIL promises to secure judicial acknowledgment of rights, their true measure lies in the degree to which they effect significant changes in society, which takes a considerable amount of time. Hence, the prominent gap in implementation edges in.

⁵ Gautam Bhatia, *The Transformative Constitution: A Radical Biography in Nine Acts* (HarperColins India 2019) Ch- 1; Anuj Garg v Hotel Association of India (2008) 3 SCC 1; State of Kerala v N M Thomas (1976) 2 SCC 310

⁶ Constitution (First Amendment) Act 1951.

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Locus Standi Revolution: Democratization the 'Equality Code'

The constitutional promise of equality given in Article 15 would have been jeopardised if not for a quiet yet transformative procedural shift that redefined who could speak before the court. The shift emerged from the recognition that the formal structure of litigation excluded ONLY those who were most in need of constitutional protection. The constitutional vision of equality could scarcely survive where the doorway to justice remained accessible only to those capable of reaching it. The traditional scope of Locus Standi itself risked making a mockery of the constitutional promise of equality in a deeply stratified society. By insisting that **only the aggrieved party could seek redress**, it inadvertently reduced Article 15 from an enforceable constitutional assurance to one often confined to constitutional theory.

In acknowledgement of the judiciary, the bench of Justice P. N Bhagwati and Justice V. R Krishna Iyer began to expand the detrimental doctrine of Locus Standi, where initially only the 'aggrieved party' was permitted to approach the court through a PIL. This is where, both the Justice, P.N Bhagwati and V.R Krishna Iyer, solidify the expansion by enforcing a route-way of permitting public-spirited individuals to approach Court on behalf of those unable to do so themselves.⁸

This constitutional evolution did not remain a mere theoretical proposition. Though, the reform did not happen overnight. Significant landmark pronouncements such as *S.P. Gupta v. Union of India*⁹ and *Bandhua Mukti Morcha v. Union of India*¹⁰ sparked an operational flaw, constitutional remedies are rather futile if they are confined within a wall of financial and social privilege. By lowering the threshold for third-party intervention, the judiciary altered the litigation landscape, paving the way for public-interest advocacy. The long-standing *Status Quo* of 'If only the wealthy can sue, rights exist only on paper' was uprooted, root and branch which was in itself, a pivotal move of the Indian judiciary.

Why did the relaxation of Locus Standi become indispensable for the meaningful realisation of Equality under Article 15?

This procedural transition to representative litigation allowed the judiciary to directly confront systemic, community-wide exclusion. This shifted equality from an individual right to a shared

⁸ SP Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (2nd edn, OUP 2003) 200 - 208

⁹ *S.P. Gupta v Union of India* (1981) Supp SCC 87.

¹⁰ *Bandhua Mukti Morcha v Union of India*.

constitutional right. This shift made the court be recognised as a social engineer rather than a passive arbitrator. It ultimately underscored the central insight of Public Interest Litigation in a stratified society where access to justice is not a part of equality, but the sole means of achieving it.

In effect, the relaxation of Locus Standi did not JUST alter the procedural regulations but rather put-forth constitutionalised access to justice as a prerequisite for realisation of substantive equality.

If access to justice is the condition that makes equality attainable, it is through judicial decisions that this condition is similarly tested, refined and at times re-imaginable in contexts of various cases with distinguishable facts to ultimately preserve justice in each.

Some of the variational cases are discussed below which are also landmark judgements that validate the arguments put forth.

Citing The State Of Madras v. Srimathi Champakam Dorairajan (1951) AIR 226, 1951 SCR 525¹¹

The case unfolds with a Brahmin woman, the petitioner, Srimathi Champakam Dorairajan who challenged the validity of 1927 Communal Government Order that allocated seats in Medical and Engineering Colleges on the basis of fixed Caste-based quotas. Despite securing a higher merit, she was denied admission on the basis of her caste, subject to contradict Article 15(1).

The bench of seven sitting judges consisted of Hiralal J. Kania, Saiyid Fazal Ali, Mehr Chand Mahajan, and Vivian Bose, B.K. Mukherjea, Sudhi Ranjan Das and M. Patanjali Shastri struck down the order. It was held that the constitutional guarantee against discrimination was absolute and could not be made subordinate to Directive principles such as Article 46 (intended to advance the interests of weaker sections). A structural limitation within the original constitutional framework was exposed through this petition. Although caste-based discrimination was outlawed by Article 15(1), the Constitution initially provided no explicit space for affirmative action in education. By contrast, Article 16(4) had, from the very outset, recognised the constitutional necessity of reservations in public employment, exposing an asymmetry within the original equality framework.

¹¹ *The State of Madras v Srimathi Champakam Dorairajan* (1951) AIR 226, 1951 SCR 525.

Yet the court's version remained strictly formal, enabling it to treat “caste” as an isolated ground and ignored its historical mark of disadvantage. By isolating caste from the centuries of structural exclusion attached to it, the Court prioritised neutrality over substantive justice. This ‘clinically literal’ approach turned equality into a restriction implied upon the state rather than a mechanism for social change. By its actions, it shielded the entrenched privilege i.e. the minority of the society and completely brushed aside the general majority who bore the brunt. Facing massive backlash, the parliament was compelled to enact the First Constitutional Amendment. The birth of Article 15(4) allowed for special provisions related to the advancement of backward classes by proposing reservations and incorporated a correction of a constitutional blind spot.

The case posed a catalyst for how judicial decisions can trigger constitutional growth by eliminating the chances of exploitation of minorities. It corrected the ideal that sticking to rigidity of a law cannot provide real equality. The gap between the theoretical proposition and practical implementation required a legal mechanism, like the PIL to be bridged.

Citing *Indra Sawhney v. Union Of India* (1992) AIR 1993 SC 477; 1992 Supp (3) SCC 217; [1992] Supp 2 SCR 454; 1993 (1) SCT 448 (SC)¹²

The legal war over public employment quotas hit a decisive turning point in *Indra Sawhney v. Union of India*, the definitive Mandal case that completely reshaped the 'arithmetic of equality' across the Indian state. A nine bench sitting judges consisted of Justice M.H. Kania, the then Chief Justice of India, Justice M.N. Venkatachaliah, Justice S.R. Pandian, Justice T.K. Thommen, Justice A.M. Ahmadi, Justice Kuldeep Singh, Justice P.B. Sawant, Justice R.M. Sahai and Justice B.P. Jeevan Reddy was tasked with adjudicating the validity of 27% reservation for marginalised sections deprived of proper utilities of society, proposed by the V.P Singh government.¹³ The core discussion of this case was whether the identification of backward classes was primarily related to Caste under Article 15(4) and 16(4).

The court upheld the reservation, but not without imposing three fold constraint.

The first fold imposed a 50% ceiling on total reservations which means that the total reservation cannot exceed half of the available seats. This alone ensures that affirmative actions

¹² *Indra Sawhney v Union of India* (1992) AIR 1993 SC 477; 1992 Supp (3) SCC 217; [1992] Supp 2 SCR 454; 1993 (1) SCT 448 (SC).

¹³ Report of the Backward Classes Commission (Mandal Commission, 1980).

do not eclipse the constitutional commitment to equality of opportunity.

The second fold introduced a ‘creamy layer’ exclusion to ensure that benefits ‘the genuinely disadvantaged’, filtered through wealthier OBC members. This excluded the socially advanced among the **other Backward Classes** so that the benefits of reservation reached those who remained genuinely disadvantaged.

The third fold holds out the reservations must be taken into consideration during initial hiring stages, excluding the application for promotional purposes.

Through these amendments, Article 15(4) recasts the constitutional understanding that treating equals alike only perpetuates inequality in a society marked by deep structural divides.

This judgement marks a clear shift from stating equality in theory to actively structuring it in practice. Although it appears that the court, as a social engineer, has produced the ultimate affirmative action, it raises concerns and social unrest. The 50% reservation, creamy layer introduction and exclusion of application for promotions find no express textual basis in the Constitution, reflecting a form of judicial balancing that arguably borders on policy-making. By reducing equality into numerical simulation, the court risks simplifying Caste reservations into administrative calculation while the continued classification of “backwardness” may inadvertently reinforce caste identities. The conclusion to this case unfolds the dual-edged nature of PIL which considers courts to make amends to meet social justice but simultaneously blurring the boundary between both adjudication and governance.

Citing Navtej Singh Johar v. Union Of India (2018) 10 SCC 1 and AIR 2018 SC 4321¹⁴

This landmark judgement affirmed the dignity of the LGBTQIA+ community, directing constitutional interpretation towards modern realities and exposing contradictions within a system that had denied fundamental rights to a minuscule segment of the population. The five-judges bench comprising of CJI Dipak Misra, Justice Rohinton Fali Nariman, Justice A.M. Khanwilkar, Justice D.Y. Chandrachud and Justice Indu Malhotra did not merely strike down a colonial provision but redefined what equality and living with dignity could mean under Article 15. Section 377 of the IPC¹⁵ had criminalised ‘unnatural offences’ or carnal intercourse

¹⁴ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1; AIR 2018 SC 4321.

¹⁵ Indian Penal Code 1860, s 377.

against the order of nature, though neutral in its nature, functioned as a tool to demolish the community of same-sex relationships. By the writ petition of Navtej Singh Johar, it was contended that criminalizing sexual intercourse between two consenting adults of the same sex hurt the sentiments of dignity of the young minds and contradicts the right to self-expression, the right to sexual autonomy, and subsequently violates the right to privacy.

Through the 'wisdom of the court' the judgement was in favour of the petitioner. The Supreme Court held that IPC Section 377, itself contradicts the ideals provided in fundamental rights of Articles 14, 15, 19, 21, affirming that sexual orientation is an intrinsic part of identity and falls within the ambit of 'sex' under Article 15. It further established that **constitutional morality prevail over prevailing notions of social morality**, ultimately restoring the rights to dignity, privacy and equality through PIL.

PIL also acted as the very mechanism that brought voices of protest to the court's benches. The court acted as a social arbitrator, bringing revolution and withdrawing the criminal stigma attached to the identities of the people of the community. Without PIL, such deeply embedded social injustices would likely have remained outside the reach of judicial scrutiny. Navtej demonstrates that PIL is not merely a procedural innovation but a constitutional instrument, extending Article 15 beyond its traditional boundaries to previously unrecognised forms of discrimination.

Although initial relief was provided, the clear refusal to recognise same-sex marriage in **Supriyo v. Union Of India**¹⁶ exposed selective application of equality. Accepting orientation and denying its civil consequences reflects constitutional hypocrisy, bending the law as it pleases the majority. Hence, recognition and temporary relief is secured but complete structural inclusion is an illusion.

THE CASTE CENSUS QUESTION

The question as of who counts as backward under Articles 15(4) and 16(4) has never really been settled. It keeps resurfacing, every time the state tries to expand or freeze the list of those who benefit, and that's exactly the question India's upcoming caste-enumerated census is going to force back into the spotlight. Two judgements, just three years apart, show how inconsistent

¹⁶ *Supriyo alias Supriya Chakraborty v Union of India* (2023).

the Court's answer actually is: does backwardness have to be proven with data, or can it just be presumed?

Citing Jarnail Singh v. Lachhmi Narain Gupta (2018) 10 SCR 663¹⁷

A five-judge bench of CJI Dipak Misra, Justice Kurian Joseph, Justice R.F. Nariman, Justice Sanjay Kishan Kaul and Justice Indu Malhotra were asked to revisit *M. Nagaraj v. Union of India* (2006)¹⁸, which had required states to collect quantifiable data on backwardness before granting reservation in promotions to SCs and STs. The Court struck down this requirement, holding that went against *Indra Sawhney*, since once a community is placed within the Presidential Lists under Articles 341 and 342, its backwardness is already constitutionally presumed. There is no need to prove it all over again. The creamy layer exclusion, first brought in for SC/ST promotions back in *Nagaraj*, was left standing here too.

Caste, here, was cut loose from data entirely. For SCs and STs, backwardness is treated as a historical fact so obvious that asking for proof would almost be an insult to communities whose exclusion is already a matter of record.

Citing Jaishri Laxmanrao Patil v. Chief Minister, Maharashtra (2021) LL 2021 SC 243¹⁹

Three years on, the opposite standard applied to the Marathas. A five-judge bench of Justice Ashok Bhushan, Justice S. Abdul Nazeer, Justice L. Nageswara Rao, Justice Hemant Gupta and Justice S. Ravindra Bhat struck down Maharashtra's SEBC Act, 2018, holding that the Gaikwad Commission report never showed the "extraordinary circumstances" needed to cross *Indra Sawhney*'s 50% cap. No presumption of backwardness here. The absence of "reliable, scientific and adequate data" was enough to sink the whole claim.

So which is it? For SCs and STs, caste is a settled historical wrong that does not need re-proving. For the Marathas, caste became something to be argued over with commission reports and statistics, something the Court could pick apart. The Court has never really explained why the same word, caste, gets to be self-evident in one case and unprovable in the next, depending entirely on who is asking. That is exactly the question the caste census is going to have to sit with: is caste being counted here as a historical marker of oppression, or does the count itself risk turning into another round of identity politics, where every community lines up a commission report hoping to clear a bar the Court has never applied consistently.

¹⁷ *Jarnail Singh v Lachhmi Narain Gupta* (2018) 10 SCR 663.

¹⁸ *M. Nagaraj v Union of India* (2006).

¹⁹ *Jaishri Laxmanrao Patil v Chief Minister, Maharashtra* (2021) LL 2021 SC 243.

What the caste census debate really shows is that the Court decides, almost case by case, whose backwardness needs proving and whose doesn't. That kind of discretion doesn't stay confined to questions of caste for long. Once a court can pick and choose which claims deserve a presumption and which need commission reports and statistics, the same discretion starts showing up everywhere else PIL touches such as in who gets heard, whose petition gets thrown out at the admission stage and how long a court decides to keep a matter open. The caste census question, in other words, is really just one face of a bigger problem with PIL itself.

The Counter Majoritarian

Difficulty of PIL

The same feature that made PIL powerful by bypassing rigid procedures for substantive justice, makes it dangerous too. A court that can relax locus standi to hear the voiceless can, with that same discretion, decide whose voice actually gets heard. This is the counter-majoritarian problem that follows PIL around, judges who are not elected²⁰, shaping outcomes that used to belong to Parliament and the executive alone.

The courts saw this coming from early on.

In **S.P. Gupta v. Union of India (1981)**,²¹ the very judgement that opened the courtroom door, Bhagwati leaned on a warning that had already been laid down a few years earlier by Justice Sarkaria, that a relaxed locus standi doesn't give a "busybody or meddlesome interloper" the right to walk in under the name of public interest. The risk was built into the doctrine from day one, and the courts knew it even as they were writing the doctrine into existence.

In the **State of Uttaranchal v. Balwant Singh Chaufal (2010) 3 SCC 402**²², the Court was dealing with exactly that risk. It admitted PIL had become clogged with frivolous, self-serving petitions, and issued guidelines asking every High Court to frame rules weeding out oblique-motive filings from genuine ones. The fact that the apex court had to police misuse of its own doctrine says enough, some petitions are entertained on barely anything while others are thrown

²⁰ It was Bickel who coined the phrase 'counter-majoritarian difficulty' in 1962 (ibid). For Bickel's first published use of the term, see Alexander M Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (Bobbs-Merrill 1962) 16. On the development of Bickel's views on the counter-majoritarian difficulty, see Anthony Kronman, 'Alexander Bickel's Philosophy of Prudence' (1985) 94 Yale LJ 1567; John Moeller, 'Alexander M. Bickel: Toward a Theory of Politics' (1985) 47 J Pol 113.

²¹ *S.P. Gupta v Union of India* (n 6).

²² *State of Uttaranchal v Balwant Singh Chaufal* (2010) 3 SCC 402.

out immediately, and that inconsistency chips away at the predictability equality law is supposed to run on.

Ashok Kumar Pandey v. State of West Bengal (2004) 3 SCC 349²³ makes the same point more bluntly. The Court dismissed a plea by someone with zero connection to the case, and said flatly that PIL isn't a vehicle for "publicity interest" litigation, warning against people who "rush to Courts... under this attractive name of public interest." The judiciary has thrown open its doors, and now spends a fair amount of energy figuring out who to turn back.

Then there is also the continuing mandamus, where courts hold onto a case for years, issuing directions, checking compliance, instead of just deciding it once and moving on. That is not adjudication anymore, it is administration. And this is the sharpest edge of the paternalism paradox that this paper keeps circling back to: a court that polices its own rules, screens its own petitioners, and hangs onto jurisdiction indefinitely isn't just interpreting the Constitution. It's running it.²⁴

CONCLUSION

The trajectory of Article 15, shaped by judicial interpretation and practised through PILs, exposes what may be termed a paternalism paradox, the court protects and uplifts marginalised groups while simultaneously deciding the scope and limits of the very rights it hands out, visible in Navtej and Supriyo where the judgements contradict each other, recognition granted, civil inclusion withheld. The same paradox is what the caste census question comes down to, from Champakam's rigid formalism to Sawhney's creamy layer math to the flat contradiction between Jarnail Singh and Jaishri Patil, caste has never been a fixed yardstick, it gets redefined by judicial discretion each time. And that discretion cuts both ways, the same Court deciding whose backwardness needs proving also decides whose PIL gets heard and whose gets thrown out, which is exactly what Balwant Singh Chauhal and Ashok Kumar Pandey had to reckon with, and continuing mandamus shows how far adjudication drifts into administration when nobody's watching the watchers. PIL remains a necessity, it has scaled unheard voices and confronted roots of exclusion, but relying on the bench alone has its limits, judicial discretion cannot always turn recognition into rights or replace the need for new laws, and true equity demands legislation that carries these victories beyond the judge's chamber.

²³ *Ashok Kumar Pandey v State of West Bengal* (2004) 3 SCC 349.

²⁴ For further discussion of this paternalism paradox in the context of Indian constitutional adjudication, see the Conclusion below.

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