

AS INTRODUCED IN THE RAJYA SABHA
ON THE 29TH APRIL, 2016

Bill No. XII of 2016

THE CONSTITUTION (AMENDMENT) BILL, 2016

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BILL

further to amend the Constitution of India

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

1. (I) This Act may be called the Constitution (Amendment) Act, 2016.

Short title, and
commencement.

(2) It shall come into force on such date as the Central Government may, by 5 notification in the Official Gazette, appoint.

2. In Article 15 of the Constitution,—

Amendment of
article 15.

(i) in clause (I) for the word "Sex" the words "sex, gender, sexual Orientation" shall be substituted;

(ii) in clause (2) for the word "sex" the words "sex, gender, sexual Orientation" 10 shall be substituted.

3. In Article 16 of the Constitution, in Clause (2), for the word “sex”, the words “sex, gender, sexual orientation shall be substituted.

Amendment of
article 16.

STATEMENT OF OBJECT AND REASONS

As our nation evolves, it is important that our Constitution also evolves to address new challenges and situations, while adhering to its eternal foundational values. Today, we are faced with a situation where article 15 of the Constitution needs to be extended. Article 15 directs the State to prohibit discrimination on the basis of religion, race, caste, sex, and place of birth. Over the years, challenges posed in the courts on these grounds have transformed this formal, legal provision of *non-discrimination* into an effort towards achieving *substantive equality*. Therefore, it is time that our fundamental rights explicitly counter exclusion on the basis of gender and sexual orientation.

Parliament has a primary responsibility in this regard, underscored by the Supreme Court's 2013 judgment in *Suresh Kumar Kaushal v. Naz Foundation*. The Supreme Court struck down Delhi High Court's decision to read down Section 377 and specifically called upon Parliament to lead the way.

Currently, article 15 has a closed list of five specified grounds—religion, race, caste, sex and place of birth. The same grounds are also applicable to article 16 which guarantees equality of opportunity in matters of public employment. Other countries have taken a more lenient view of the grounds on which basis, discrimination is acknowledged and remedied. Constitutions like that of Canada, and South Africa have used to terms 'grounds such as...', 'including...', 'in particular...' or '*other status*' to indicate that the list is not exhaustive and leaves space for interpretation, to include unenumerated or analogous grounds. *Article 14 of the European Convention of Human Rights and Section 9 of the South African Constitution* contain the most wide ranging list of expressly prohibited grounds and the *Fourteenth Amendment of the United States Constitution* is entirely open-ended, leaving the courts to determine which grounds should be protected.

India too is seeing a convergence with more liberal non-discrimination clauses. The *Indra Sawhney v. Union of India (1992)* judgement indicated that those grounds, "that are not specified in article 15 but are analogous to those specified therein, and which have the potential to impair the personal autonomy of an individual" must upon scrutiny, be able to claim protection under article 15.

However, leaving it to the judicial system alone to respond to issues of inequality on the basis of sexuality and gender may not be adequate. It is high time to challenge inequality on the basis of sexual orientation and gender by explicitly expanding article 15 and article 16 to ensure substantive equality.

Hence this Bill.

PROF. M.V. RAJEEV GOWDA

ANNEXURE

EXTRACT FROM THE CONSTITUTION OF INDIA

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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.

Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

(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.

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

Equality of opportunity in matters of public employment.

(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.

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RAJYA SABHA

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(*Prof. M.V. Rajeev Gowda, M.P.*)