

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 3

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com.

Article 15: Panacea for Discrimination

KUMAR SATYAM¹ AND DEVJEET GAUTAM²

“My submission therefore is that, so far as this point is concerned, the Constitution contains ample provision for the overcome from the system of discrimination and nothing more is really necessary.”

- Dr. B.R. Ambedkar

In the constituent assembly on 29 November, 1948

ABSTRACT

Article 15 of the Indian constitution deals with discrimination on the basis of caste, gender, religion, sex, place of birth... Basically the inherit discrimination in the Indian society among the gender, sex and caste found in the Indian society due to division of the population on the basis of their occupation, but the passage of time the motive of the caste classification changes their intrinsic values and takes their converted version and the caste system now based on birth. In India discrimination on the basis of gender is also present in society, Parliament of India, highest body for the legislation not yet pass a bill for 33% reservation for women in the Lok Sabha election, however, reservation for the women in the Panchyat elections since 1993. All the humans are equal because of all are human but all humans are not equal in physical and mental level. For the equality among equals constitution of India has special provision for the women and children. And for the betterment for the backward classes many provision enables in the constitution. This article is analysis of article 15 and its provision.

I. INTRODUCTION

“Man is born free, but everywhere he is in chains”- Jean Jacques Rousseau

Equality is an indication that all humans are born free and equal, it is a key concept to ensure the humanity on the planet, and however, Humans have power acquiring nature from the very beginning of the time, by the different methods. In United States of America have discrimination on the basis of race, colour but in India, the story is totally different. In Indian

¹ Author is a student at School of law and governance, Central University of South Bihar.

² Author is a student at Faculty of Law, University of Allahabad, India.

culture the powerful case (upper class of the society) discriminates on the lower castes. Basically, the Indian society divided in many caste and religions. Caste system in India was divided on one's occupation, many modern thinkers have frequently tried to explain Indian social rules in terms of their functional or economic utility- for example, Brahmins involved in Vedic practises, Kshatriya involved in war field, and so on.... Jati system in India arise due to concept of karma i.e. what one does in this life. Occupations have a higher or lower status depending on how close they are near to the source of pollution-to the dirt, death, blood, decay of biological substance. The system of Jatis generated by these religious beliefs .The most important and real reason for the caste system in India is Commercial activity- Commercial activity was also based on Jatis, which acted like closed corporations that needed little external support. But, by the passage of time, this system lost its intrinsic values and shaped itself in new version, from here discrimination has started and yet it is practised. The main reason behind the insertion of provisions of article 15 was that in pre-Independence India, especially in the Caste system, it was often seen that one section was seen and deemed inferior to other section. When India got independence from 200 years long colonial rule, the framers of the Indian constitution has concern on the equality in the society. Article 15 is acts as the extension of article 14 of the Indian constitution, which is "The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth."¹The objective of Article 15 is eradicates discrimination from the country and establish a society where every human must be equal. The article not only talks about caste discrimination but also talks about the special provision for women and children, article 15(3) is exception of the article 15 of the Indian constitution. Article 15(3) recognises the fact that the women in India have been socially and economically handicapped for centuries and, as a result thereof, they cannot fully participate in the socio-economic activities of the nation on a footing of equality³

By the virtue of the article 15 of the Indian of the provision of the reservation has incorporated in the law. Reservation plays a crucial role to ensure equality in the society; reservation gives wings to the lower section of the society. Commenting on Article 15(1), the Supreme Court has observed in the case of *Valsamma Paul v. Cochin University*⁴ that:-

³. The constitution of India, 1949.

². Jain M.P, *The constitutional law of India*, ed.8th,LexisNexis.

³. AIR 1996 SC 1011, 1996 (1) CTC 301, (1996) 3 GLR 92, JT 1996 (1) SC 57, 1996 (1) KLT 169 SC, 1996 LabIC 919, 1996 (1) SCALE 85, (1996) 3 SCC 545, 1996 1 SCR 128, 1996 (1) UJ 626 SC

⁴.ibid.

⁴ AIR 1996 SC 1011, 1996 (1) CTC 301, (1996) 3 GLR 92, JT 1996 (1) SC 57, 1996 (1) KLT 169 SC, 1996 LabIC 919, 1996 (1) SCALE 85, (1996) 3 SCC 545, 1996 1 SCR 128, 1996 (1) UJ 626 SC

“Art. 15(1) prohibits discrimination on grounds of religion or caste identities so as to foster national identity which does not deny pluralism of Indian culture but rather to preserve it”⁴.

Article 15 is the part of Right to equality, which is fall under part III (Fundamental Rights) of the constitution of India. It also ensure the objective of the preamble to the constitution, the preamble of the constitution ensure justice on the basis of social, economic and political

II. DISCRIMINATION AND ARTICLE 15

The base of the Indian constitution is on equality, Indian society have different basis of discrimination, the founding father of the constitution had concern about the marginalized class of the society, which were discriminate on the various platform. Syed A. Rouf said in constituent assembly that “The intention of this article is to prohibit discrimination against citizens. We have prohibited discrimination on grounds of 'religion, race, caste or sex'. But I am afraid; the evil elements who might attempt to make discrimination against citizens will do so not on the ground of religion, race, caste or sex”⁶. In the case of *Dasaratha v. State of A.P.*⁷, the Supreme Court held that Article 15 is an instance and particular application of the right of equality provided for in Article 14. While Article 14 guarantees the general right, Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. India is the land of many religions and also origin of the some major religions i.e., Hinduism, Buddhism, Jainism. India has law on family matter; Indian has personal laws to regulate the family matters. i.e., Hindu law for Hindus, Muslim law for Muslims. But there was an issue for the personal laws some scholars argue that the authority of the personal law inconsistent with the fundamental right because it is discriminate on the basis of religion. In the cases the Supreme Court held that challenges to these laws (personal laws) on the basis of religious differentiation, or on the basis of differentiation between males and females have not been accepted⁸. The personal laws cannot challenges in the court of law on the basis of ‘religion’ only. However, a three-Judge Bench of the Supreme Court in the case of *Masilamani Mudaliar v. Idol of Sri Swaminathaswami Thirukoil*⁹ has taken a contrary view and has held that personal laws to the extent that they are in violation of the fundamental rights are void.

⁵ ibid

⁶ Constituent Assembly Of India Debates (Proceedings) - Volume VII, 29 November 1948

⁷ 1961 AIR 564, 1961 SCR (2) 931

⁸ *Gurdial Kaur v. Mangal Singh*, AIR 1968 P & H 396 (Pre-constitution customs cannot be challenged as contravening Fundamental Rights); *Sangannagouda v. Kalkangouda*, AIR 1960 Mys. 147 (non-statutory law of adoption held valid); *Santhamma v. Neelamma*, AIR 1956 Mad. 642 (non-statutory law of partition held valid); *Bibi Maniram v. Mohd. Ishaq*, AIR 1963 Pat. 229 (Mohammedan Law of gift held invalid); *Abdul Khan v. Chand Bibi*, AIR 1956 Bhopal 71 (Muslim law of marriage held not invalid on the ground of sex discrimination)

⁹ 1996 AIR 1697, JT 1996 (3) 98

III. WOMEN AND CHILDREN AND ARTICLE 15

The incorporation of the article 15(3) in the constitution of India to empower the status of the women and children in the society, everyone known to the status of women and children in our country and also known about physical capability of the same but the Preamble to the constitution itself epitome of the principle of the gender equality. Not only Fundamental Rights but Fundamental Duties and Directive Principles of state policy (DPSPs) also empower the women in the society within the framework of a democratic polity, laws, policies have aimed at women's advancement in different perspective. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Indian society always discriminate on the physical strength of the women, wage discrimination. Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993. The main article of CEDAW, 1993 the article, which talks about discrimination on the basis of sex and gender, is following:

A. Article 19¹⁰

For the purposes of the present Convention, the term "discrimination against women" shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

B. Article 2¹¹

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

¹⁰ "Convention on the Elimination of All Forms of Discrimination against Women". www.ohchr.org.

¹¹ "Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979" <https://web.archive.org/web/20150507222247/http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>

- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;
- (g) To repeal all national penal provisions which constitute discrimination against women.

IV. ARTICLE 15 AND BACKWARD CLASSES

Who are backward classes? The constitution of India gives no definition of backward classes. Article 340, however, contemplates appointment of a commission to investigate the condition of “socially and educationally backward classes” and such other similar matter¹². In **M.R. Balaji v. State of Mysore**¹³, it was held that the caste of a group of person could not be sole or even predominant factor, it could be a lucid test for ascertaining whether a particular class was a backward class or not. Backwardness under article 15(4) has essential test on the basis of social and educational both, the backwardness in not depend on only basis of social or educational, but there is lack of financial and political criteria for inclusion for the backward classes.

V. CONSTITUTIONAL PROVISION

The Constitution of India not only grants equality to women but also empowers the State to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio economic, education and political disadvantages faced by them. Fundamental Rights, among others, ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on grounds of religion, race, caste, sex or place of birth, and guarantee equality of opportunity to all citizens in matters relating to employment. Articles 14, 15, 15(3), 16, 39(a), 39(b), 39(c) and 42 of the Constitution are of specific importance in this regard.

¹² First in 1953 under the chairperson of Kaka Kelkar and the second in 1978 under the chairman of B.P. Mandal, see report, Backward classes commission, Delhi, 1955

¹³ **M.R. Balaji v. State of Mysore**, AIR 1963 SC 649 : 1963 Supp (1) SCR 439.

Constitutional Privileges:

- (i) Equality before law for women. (Article 14)
- (ii) The State not to discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (Article 15 (i))
- (iii) The State to make any special provision in favour of women and children. (Article 15 (3))
- (iv) Equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (Article 16)
- (v) The State to direct its policy towards securing for men and women equally the right to an adequate means of livelihood (Article 39(a)); and equal pay for equal work for both men and women. (Article 39(d))
- (vi) To promote justice, on a basis of equal opportunity and to provide free legal aid by suitable legislation or scheme or in any other way to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. (Article 39 A)
- (vii) The State to make provision for securing just and humane conditions of work and for maternity relief. (Article 42)
- (viii) The State to promote with special care the educational and economic interests of the weaker sections of the people and to protect them from social injustice and all forms of exploitation. (Article 46)
- (ix) The State to raise the level of nutrition and the standard of living of its people (Article 47)
- (x) To promote harmony and the spirit of common brotherhood amongst all the people of India and to renounce practices derogatory to the dignity of women (Article 51(A) (e))
- (xi) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat to be reserved for women and such seats to be allotted by rotation to different constituencies in a Panchayat. (Article 243 D(3))
- (xii) Not less than one- third of the total number of offices of Chairpersons in the Panchayats at each level to be reserved for women. (Article 243 D (4))
- (xiii) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality to be reserved for women and such seats to be allotted by rotation to different constituencies in a Municipality (Article 243 T (3))

(xiv) Reservation of offices of Chairpersons in Municipalities for the Scheduled Castes, the Scheduled Tribes and women in such manner as the legislature of a State may by law provide (Article 243 T (4))

The State has make various legislative measures to ensure equal rights, to counter gender discrimination and various forms of violence and atrocities and to provide support services especially to women. Although women may be victims of any of the crimes such as 'Murder', 'Robbery', 'Cheating' etc., the crimes, which are directed specifically against women,.

A. The Crimes Identified Under the Indian Penal Code (IPC)

- (i) Rape (Sec. 376 IPC)
- (ii) Kidnapping & Abduction for different purposes (Sec. 363-373)
- (iii) Homicide for Dowry, Dowry Deaths or their attempts (Sec. 302/304-B IPC)
- (iv) Torture, both mental and physical (Sec. 498-A IPC)
- (v) Molestation (Sec. 354 IPC)
- (vi) Sexual Harassment (Sec. 509 IPC)
- (vii) Importation of girls (up to 21 years of age)

A. The Crimes identified under the Special Laws (SLL)

Although all laws are not gender specific, the provisions of law affecting women significantly have been reviewed periodically and amendments carried out to keep pace with the emerging requirements. Some acts which have special provisions to safeguard women and their interests are:

- (i) The Employees State Insurance Act, 1948
- (ii) The Plantation Labour Act, 1951
- (iii) The Family Courts Act, 1954
- (iv) The Special Marriage Act, 1954
- (v) The Hindu Marriage Act, 1955
- (vi) The Hindu Succession Act, 1956 with amendment in 2005
- (vii) Immoral Traffic (Prevention) Act, 1956
- (viii) The Maternity Benefit Act, 1961 (Amended in 1995)
- (ix) Dowry Prohibition Act, 1961

- (x) The Medical Termination of Pregnancy Act, 1971
- (xi) The Contract Labour (Regulation and Abolition) Act, 1976
- (xii) The Equal Remuneration Act, 1976
- (xiii) The Prohibition of Child Marriage Act, 2006
- (xiv) The Criminal Law (Amendment) Act, 1983
- (xv) The Factories (Amendment) Act, 1986
- (xvi) Indecent Representation of Women (Prohibition) Act, 1986
- (xvii) Commission of Sati (Prevention) Act, 1987
- (xviii) The Protection of Women from Domestic Violence Act, 2005

Government also makes several commissions, law, ordines, reservation in the Panchayat elections, plans to better future for the girl child, Policies for the Empowerment of Women, in the direction of better lifestyle and more freedom for the women and children. Some of the institution listed below:

B. National Commission for Women: In January 1992, the Government set-up this statutory body with a specific mandate to study and monitor all matters relating to the constitutional and legal safeguards provided for women, review the existing legislation to suggest amendments wherever necessary, etc.

C. Reservation for Women in Local Self-Government: The 73rd Constitutional Amendment Acts passed in 1992 by Parliament ensure one-third of the total seats for women in all elected offices in local bodies whether in rural areas or urban areas.

D. The National Plan of Action for the Girl Child (1991-2000): The plan of Action is to ensure survival, protection and development of the girl child with the ultimate objective of building up a better future for the girl child.

E. National Policy for the Empowerment of Women, 2001: The Department of Women & Child Development in the Ministry of Human Resource Development has prepared a “National Policy for the Empowerment of Women” in the year 2001. The goal of this policy is to bring about the advancement, development and empowerment of women.¹⁴

VI. CONCLUSION:

Dr. Bhim Rao Ambedkar said in constituent assembly that the constitution have ample

¹⁴ . <https://wcd.nic.in/womendevlopment/national-policy-women-empowerment>.

provision for eradication of discrimination. All the humans are equal because of all are human but all humans are not equal in physical and mental level. Caste system in India was divided on one's occupation, many modern thinkers have frequently tried to explain Indian social rules in terms of their functional or economic utility- for example, Brahmins involved in Vedic practises, Kshatriya involved in war field, and so on.... Jati system in India arise due to concept of karma i.e. what one does in this life. Occupations have a higher or lower status depending on how close they are near to the source of pollution-to the dirt, death, blood, decay of biological substance. For the equality among equals constitution of India has special provision for the women and children. And for the betterment for the backward classes many provision enables in the constitution. India has also ratified various international conventions and human rights instruments committing to secure equal rights of women. Indian society always discriminate on the physical strength of the women, wage discrimination Key among them is the ratification of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in 1993.

VII. REFERENCE

1. Shukla, V.N, Constitution of India ed.13th, EBC.
2. Jain, M.P, Indian Constitutional Law, ed.8th, LexisNexis.
3. <http://ecoursesonline.iasri.res.in/mod/page/view.php?id=33730>
4. Convention on the Elimination of All Forms of Discrimination against Women New York,18December1979”<https://web.archive.org/web/20150507222247/http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx>
