

PROMOTING EQUALITY OR UNCALLED UPLIFTMENT ARTICLE 15(3) OF THE INDIAN CONSTITUTION

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ABSTRACT

This article aims to explore the scope of Article 15(3)¹ of the Indian Constitution besides Article 14², further know its scope, and evaluate whether it justifies its purpose. Article 15(3)³ is a women and child-centric provision which basically provides protective discrimination, and affirmative actions and aims to uplift women and children, which directs the state not to stop itself from making any law meant for the upliftment of women and children. The history of special provisions for women is also discussed followed by some backlash it faces. Further, the unexplored side of women's affirmative laws is discussed while evaluating a real-life incident that indirectly points towards the faulty amalgamation of the mindset of the common people and the distinct laws, followed by a conclusion with some suggestions that can be implemented for better application of such laws.

Keywords: Article 15(3), Article 14, Women, Provisions.

INTRODUCTION

Women are a single word that depicts many other significant roles. Women who are considered as equal to goddesses on one hand and on the other are the victims of the most heinous atrocities. To eliminate the injustice towards women in our society, many different steps have been taken. In today's time we are at a very indecisive stage where women are actually getting benefitted from such steps and on the other side there has been misuse of the same. Is it the right time to say that women and men in our society are now on an equal pedestal? Or now we need more gender-neutral laws for equal representation and equality before the law.

The root of all the women and children-focused laws prevailing in the current times is Article 15(3)⁴ and Article 14⁵. Article 14⁶ talks about equality before the law and equal protection of

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¹ Constitution of India 1950, art 15 cl 3

² Constitution of India 1950, art 14

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ *Ibid.*

the law irrespective of caste, race, gender or religion, etc. When Article 14⁷ is read with Article 15(3)⁸ of the Indian Constitution, we can certainly infer that women and children of our society have been an oppressed class since the very beginning, in order to achieve an equal status for them in today's times we need Article 15(3)⁹.

Everything comes for a price on the one hand where the merger of these two articles is there to provide the less recognized class of women and children with the umbrellas of their rights, there have been many instances where we can observe the misuse of the same.

ARTICLE 14 AND ARTICLE 15(3) OF THE INDIAN CONSTITUTION 1949

In order to gather and have a better understanding of Article 15(3)¹⁰ it is very necessary to know what Article 14¹¹ and Article 15¹² of the Indian Constitution offers us.

“Article 14¹³

The bare reading of this constitutional provision is “Equality before law: 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”

Article 14¹⁴ merely gives the citizen of this country equality before the law as their fundamental right eliminating all the areas of discrimination. But the reality holds something different, even after 75 years of independence the evil of discrimination still haunts us.

“Article 15¹⁵

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

- 1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth, or any of them
- 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 palaces of public entertainment; or

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

¹⁰ *Id.*

¹¹ Constitution of India 1950, art 14

¹² Constitution of India 1950, art 15

¹³ *Ibid.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

- (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
- 3) Nothing in this article shall prevent the State from making any special provision for women and children
- 4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes”

A bare reading of Article 15¹⁶ of the Indian constitution again gives the idea that the citizen of India shall not be subjected to any kind of discrimination which in turn again uplifts Article 14¹⁷ which talks about equality before the law.

But here the main contention is clause 3 of Article 15¹⁸, which says that “nothing in Article 15¹⁹ shall prevent the state from making any special provision for women and children”. Article 15(3)²⁰ is not only the statutory provision that is provided for the betterment and upliftment of women but Section 56 of CPC²¹ also talks about the same. Apart from these two provisions, there are several other provisions in our legal code that talks about a similar issue. The need for the inclusion of such sections was greatly felt during the earlier times, the formative years of these legislations, where women-centric provisions like these were enacted to serve the moral and structural inequality which were faced by the women. Various women-centric schemes and the representation of women in the parliament are one of the many positive outcomes of Article 15(3)²² of the Indian Constitution, 1950.

TRACKING THE ROOTS OF THE DISTINCTIVE PROVISIONS FOR WOMEN

Looking back to the real idea and intention behind making the special provision for the women of our country will lead to a better understanding and viewpoint about Article 15(3)²³.

From the very beginning, even before the independence, the main idea behind the formation of the laws was that there should not be any discrimination on the basis of gender. Members of the Women's Indian Association (WIA) participated in the National Convention that wrote the Commonwealth of India Bill in 1925. Article 7, headed "Fundamental Rights," mentions the

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Code of Civil Procedure 1908, s 56

²² *Id.*

²³ *Id.*

following: “no disqualification or disability on the basis of sex”.²⁴ Similar incidents played a tremendous role in the drafting of the legislation further, which also considered equality among all as one of the important fundamental rights. One of the earliest organizations for women was made in 1927, All India Women’s Conference (AIWC) also supported the idea of fairness and sameness among genders. They were against the notion of giving an upper hand to the women of our society. “The motto of the AIWC was “equality and no privileges, a fair field and no favor”. Thus, differential treatment in favor of women constituted an admission of the inferiority and vulnerability of women as per the AIWC”²⁵. This kind of action taken in the past certainly points out women’s associations and the women in the past were themselves against the notion of extra protection and even demanded a level playing ground. It can be inferred that the inclusion of such provisions was because of the patriarchal society that was very much evident at that time. However, certain instances such as maternity relief, separate schools, and hospitals for the women to meet the structural inequality they have been facing would materially satisfy the inclusion of Article 15(3)²⁶ but apart from benefits like these, every other interpretation would push the women’s class towards more vulnerability.

A CRITICAL REVIEW OF THE ARTICLE 15(3) OF THE INDIAN CONSTITUTION 1949

Article 15(3)²⁷ of the Indian Constitution 1950, surely aims for the betterment of women and provides protective discrimination but it should not safeguard women from the commission of crimes or any other threat caused by them. Provisions like these certainly provide an upper hand to the women class of our country, but this upper hand is sometimes misused for the misrepresentation of the other gender. Does the early injustice met by the women justifies their not-so-legal acts and burden the men of our society? The goal of such an article should also include the maintainability of equality not the positive discrimination of a certain class.

There have been a certain number of cases in which people brought forth similar contentions regarding the discrimination faced by men and the laws being women-centric. The petitioner was found guilty under Sections 342²⁸ and 354²⁹ of the Indian Penal Code in the case of Girdhar

²⁴ Unnati Ghia, ‘Affirmative Action Under Article 15(3): Reassessing The Meaning of "Special Provisions" For Women’ (2020) 32(2) National Law school Of India Review
<<https://repository.nls.ac.in/cgi/viewcontent.cgi?article=1086&context=nlsir>> accessed 15 May 2023

²⁵ *Ibid.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ Indian Penal Code 1860, s 342

²⁹ Indian Penal Code 1860, s 354

v. State³⁰. According to the petitioner, providing similar legislation for women would be discriminatory because there are no regulations relating to assaults against men intended to offend their modesty. According to Article 15(1)³¹, Section 354 is unlawful.

There have been cases such as the lodgement of false cases by women and the presence of such provisions as Article 15(3)³² of the Indian Constitution 1950, which makes a horrendous combination for the other party.

False rape charges cause a spike in crime, mess with crime statistics, and tend to devalue the crime of rape, and "no sooner that the news of a person having been accused of rape spreads in the society, he is looked down upon by all and sundry"³³. The NCRB's report of 2019³⁴ states that of the 31, 677 rape cases registered in India, 4,009 cases ended in a 'final report false' condition. Apart from rape cases, a similar condition is seen in dowry cases. "Every year more than 10,000 complaints of dowry harassment are found to be false"³⁵.

As it is rightly said by Patricia Cornwell "I believe the root of all evil is abuse of power". If someone is provided with certain powers there are high chances of that power getting misused. Using provisions to satisfy one's own selfish motive is one of the repercussions of such laws.

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UNPACKING THE PRACTICALITY OF THE ARTICLE 15(3) IN TACKLING DISCRIMINATION

There have been many times when you must have heard a line that "The driver doesn't know how to drive (a pause, and sudden realization), oh woman is driving" or "Oh! A female is driving". Women are generally considered as not safe drivers is just merely a stereotype and myth. Research has shown that women drivers are less involved in accidents that are caused due to incorrect driving than their male counterparts³⁶.

³⁰ *Girdhar v. State* 1953 CriLJ 964

³¹ Constitution of India 1950, art 15 cl 1

³² *Id.*

³³ 'Women Lodging False Rape Cases Should Be Punished :Court'(The Economic Times, Jan 28,2015)<<https://economictimes.indiatimes.com/news/politics-and-nation/women-lodging-false-rape-cases-should-be-punished-court/articleshow/46043647.cms?from=mdr>> accessed 15 May 2023

³⁴ 'Crime In India 2019' (NCRB) <https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf> accessed 15 May 2023

³⁵ Deepthiman Tiwary, '10% dowry cases false, the government plans changes in law' (Times of India March 22, 2015) <<https://timesofindia.indiatimes.com/india/10-of-dowry-cases-false-government-plans-changes-in-law/articleshow/46649047.cms>> accessed 15 May 2023

³⁶ 'Women Are Safe Drivers'(Bank Bazar) <<https://www.bankbazaar.com/driving-licence/women-are-more-safe-drivers.html#:~:text=As%20per%20a%20research%20conducted,major%20cause%20of%20the%20accident.>>> accessed 15 May 2023

Now taking on the notion that women and men both stand on an equal pedestal in terms of driving. Narrating a real-life incident, I want to put forth a confused state of mind inculcated by the general public. On one fine Sunday, my friend and I decided to explore a famous market, a 30 Km cab ride from our place. We started at 12 in the noon and when we were 10 mins from our destination we stopped at a traffic signal, following the traffic rules. Our car's speed was nil and it was at rest and suddenly we felt a very firm jerk from the back of our car. Our anxious cab driver got out and tried talking to that car's driver. But the driver was not coming out and even tried running from the place of the accident. When finally, we managed to stop and have a conversation with the other driver, we found out that the driver was female. Then a lot of the public gathered there. The female in no time started shouting at our cab driver scornfully. Later on, the public on the road started accusing, blaming, and threatening our cab driver that he was at fault and the woman was innocent and if he will not leave the place immediately they will call the police and will get him arrested. Poor cab driver returned to his wagon and we moved on.

After witnessing this incident, the only thing that kept pinching me was that if we consider the public at large, on one hand, they consider women as not-so-fine drivers, and on the other they were advocating that female's wrongful action of crashing our cab. Isn't our point of view not balanced?

CONCLUSION

Now as we consider Article 15(3)³⁷ in relation to the incident, here clause 3 is providing protective discrimination, which obviously points to the fact that women are the oppressed class, and in a conflict between man and woman, the woman might be the one suffering. But what if the woman is at fault? Such clauses obviously create an opinion of sympathy towards the female. But do they actually need it? Evidently, there is a certain class of women in our society who are in dire need of that upliftment but is the justification that Article 15(3)³⁸ comes up with relevant for everyone?

It is high time to actually realize the consequences of our actions both at the public level and the sovereign level and make the necessary amendments required both in our behaviors and in our legal system and make our approaches to such laws and incidents more stabilized. For example, bringing in some changes like these provisions need to be reviewed and ascertain that

³⁷ *Id.*

³⁸ *Id.*

these provisions are still prevalent in justifying the historical inequality or they have been just there as long as they are not bothering someone. Women in actual need of these provisions should be categorized and yes, it is true all women who come under the benefit of this provision do not stand on equal footing. Like the recent 10% EWS reservation we need a stratification here too. Apart from this, there is also the need to change the mindset from the very beginning through education and consider women not any less than men.

