

Indian Constitution Contradicts Itself by Granting Special Treatment to Women

Abstract

The Constitution of India by the virtue of Article 14 guaranteed the 'right to equality' to all people residing within the territory of India. The Indian Constitution prohibits the arbitrary and discriminating acts of the state but on the other hand by the virtue of Article 15 (3) it grants special treatment to women. So Constitution ensures that every person, residing within the territory of the country, should be treated equally but at the same times it contradicts itself by providing special treatment (provisions) to women and children and thus in that case it seizes the 'right to equality'. So would it be reasonable to say that our law which says that it treats everyone equally is itself partial or say biased for women and children. Or only the few provisions of the Constitution are biased. On the basis of different nature of society different laws are needed and there is needed a legitimate control over the policies and for the laws which are enacted considering the interest of the state. When the circumstances are unequal they should be treated unequally and if identical treatment is done it would result into inequality. The reasonable classification which is permitted is necessary for a progressive society. Equality before law provided under Article 14 does not equality provided on the basis of mathematics to all persons in all the circumstances.

Keywords: Equality before Law, Equal Protection of Laws, Arbitrary and Discriminating Acts, Special Treatment, Reasonable Classification, Discrimination on The Basis of Gender.

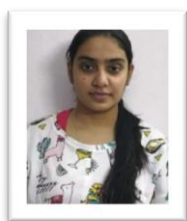
Introduction

The slogan of the French Revolution i.e. liberty and equality, which are considered as the terminology of enthusiasm and supremacy, are given the realistic effect by the U.S. Congress by the abolition of slavery and throughout many amendments¹. These words are enshrined in the Constitution of India under the purview of 'right to equality'. Our legislators have not only incorporated the maxim 'Liberty and Equality' in the Preamble of our constitution but also given it the practical effect in the Article 17 of the Constitution of India, which aims at abolition of untouchability and same the same as an offence, and in Article 14 of the Constitution of India, which guaranteed the right to equality.

Though Article 14 equally treats the people who reside within the territory of India but somewhere it is inclined towards the women and children. It promotes the equality among genders but at some point of time it is biased. So it can be right to say that the Article 14 do discriminate between male and female. The constitution has enacted many provisions exclusively for women only. The reason may be that all persons differ from each other on various conditions, status, attainment, etc, so they are not equal by nature. So if every time law treats all the persons equal then it would lead to prejudice. The principle of equality enshrined in the constitution treat the equal who are equal and treats unequal who are unequal. So the law can make classification between male and female if there is any significant or reasonable need, provided that there is an appropriate link between the classification and the aim which is required to be accomplished. But here a question arises that on what grounds a reasonable classification can be done and is there a really need for such classification which make the law biased.

Aim of the Study

This paper deals with the comprehensive study of the law in the scope of its gender biasness with respect to Article 14 and Article 15(3) of the Indian Constitution.



Chandni

Research Scholar,
National Law University,
Jodhpur, Rajasthan, India

Review of Literature

Taufiq Ahmad and Anil Kumar Mishra in their article, "Legal status and rights of women in Indian constitution," in International Journal of Advanced Education and Research, Vol. 1 Issue 1, (2016), stated that with the progress of science and the advancement of knowledge in the modern era, a movement for the emancipation of women was started, known as the women's liberation movement. At the same time, progress is being made in democracy and in the creation of a republican form of government that defends the rule of law and human rights. Equality before the law is the basic foundation of a society that is governed by the rule of law that guarantees equality between people. Thus, a new human perspective on a woman has awakened human conscience, so that a global push for reform has motivated the legal doctrine of the law in favor of women throughout the civilized world. India is one of these.

Sutapa Saryal, in his article "Women's Rights in India: Problems and Prospects" in International Research Journal of Social Sciences Vol. 3(7), (2014), discussed that constitution gives utmost importance to women not only in terms of social aspects but also in the terms of education. Although the right to education enshrined in Article 21 of the Indian Constitution has made it compulsory for the government to provide free education to all, the high rate of education of women is still a distant dream. Despite the fact that Sarva Shiksha Abhiyan somehow managed to bring the girl back to school, however, her retention rate at school is lower than her male counterpart.

Divya, in her article, "A Study on the Rights and Privileges of Women in India," in Journal of Humanities and Social Science Vol. 2 Issue 7, (2017), discussed that to act pursuant to Article 15, two conditions must be met. First, proof must be provided that the state has made an unjustified differentiation and, secondly, the differentiation negatively affects the applicant. Article 15 in expressing in particular the general principle of equality enshrined in Article 14 became the central axis on which the whole scheme of equality between men and women revolves. The article read in light of the marginal note suggests that it prohibits all kinds of discrimination, for or against, if they are based on sex. The guarantee against sex discrimination extends to all legislative, executive and judicial actions of the government. Several debates have arisen in laws on the causes of the meaning of discrimination in Article 15.

Hanumanthappa DG, in the article, "Constitutional and legal provisions for women in India," in International Journal of Multidisciplinary Research and Development Vol. 2 Issue 8, (2015), discussed that human rights are those minimum rights that all individuals can necessarily obtain, since he or she is a member of a human family. The constitution of India also guarantees the equal rights of men and women. However, in the area of human rights of women in India, there is a wide gap between theory and practice. Indian society is a society dominated by men, where it is always assumed that men are

superior to society. Women in India very often face discrimination, injustice and dishonor. Although women in India have been granted more rights than men, even then the status of women in India is miserable. The document will shed light on the human rights of women in India and explains how all fundamental rights granted to women are violated in India, focusing on various crimes committed against them.

Article 14 Guaranteed Right to equality

The Constitution of India in its Article 14 states that every person residing within the territory of our country will be subject to equal treatment before law. This fundamental right is guaranteed by the constitution to every person within the India irrespective of the fact that whether they are citizen or not. Article 14 talks about two concepts i.e. 'equality before law' and 'equal protection of laws'. It directs the states as not to deny any person 'equality before law' and 'equal protection of the laws'. Granting 'equality before law' forbids discrimination. It is considered as a negative notion. Whereas the granting 'equal protection of the laws' is concerned it need the State to provide special treatment to the persons facing dissimilar situations so that there an establishment of 'equality' amid all. This is a positive concept. So the very outcome of this is that equal should be treated equally and unequal should be treated unequally. Though there is so common feature between the two expressions in article 14 but it do not signify the same thing. The term 'law' used in the former expression is taken in a in a generic sense or say a philosophical sense and in the latter expression it is taken into account for specific laws².

Implication of Reasonable Classification

After considering the cases like *Chiranjit Lal Chaudhary v. The Union of India and Others*³, *The State of Bombay v. F.N. Balsara*⁴, it is well established that Article 14 prohibits class legislation but when it comes for the purposes of legislation it don't prohibit the reasonable classification.

The criterion for deciding the classification to be reasonable can be done through two tests-

1. "It should not be arbitrary or vague. It should be based on an intelligible differentia, some real and substantial distinction, which distinguishes persons or things grouped together in the class from others left out"⁵.
2. "The differentia adopted as the basis of classification must have a rational or reasonable nexus with the object sought to be achieved by the statute in the question"⁶.

The doctrine of classification is supported by this distinction and on the very well established fact that every time it might not be possible that circumstances which govern one person shall necessarily be the same for governing other person. So the question of unequal treatment cannot be arisen between the persons governed by different circumstances.⁷ Human dignity and distributive justice are essential to equality⁸.

In the case *Kathi Raning Rawat v. the State of Saurashtra*⁹, Supreme Court held that equal protection of law by the virtue of Article 14 is

scrutinized with the assumption that the action taken by State will be rational and justified. Sometimes it might happen that different procedures, under which persons are tried, may involve discrepancy in treatment of people but that discrepancy is not itself sufficient to overshadow this assumption and ascertain discrimination except if the degree of such discrepancy goes more extensively than what the motive for its existence is required. So if there is any discrepancy in the procedure which functions significantly leading to any shortcoming to the accused is discriminatory and hence violating the Article 14. Thus the equality which is guaranteed by our Constitution should not only envisage formal equality but also grant absolute equality. Also Article 15 (1) of the Constitution of India prohibits the state to discriminate on the grounds of religion, race, caste, sex or place of birth. So Article 14 and 15 (1) of the Constitution of India facilitate to attain the Constitutional Objective of real and absolute equality.

Thus the equality, as guaranteed by Constitution, through the Articles protects the people by treating equals equally, and treating un-equals unequally. This whole criterion authorizes the 'positive discrimination' in the favour of the disadvantaged, weaker, lower sections of the society¹⁰.

In the case *State of West Bengal v. Anwar Ali Sarkar*¹¹, the Calcutta High Court held that the some provisions of the West Bengal Special Court Act, 1949, was unconstitutional because of the reason that it was 'discrimination without reason' and without any rational basis. It was found that there was no probable nexus between the classification and the object required to attain.

Section 437 of Code of Criminal Procedure, 1973¹², gives an authority to release an accused on bail in a case of non-bailable offence except in the case if such offence charged punishable with death or imprisonment for life. Further this section provides an exception to its own rule that a woman may be release on bail even though if the offence charged is punishable with death or imprisonment for life. So it can be rightly said that this is a provision which provides 'positive discrimination' in the favour of women. Even though this section provides disparity in the procedure for men and the women it cannot be held discriminatory and in violation of equality clause as guaranteed by Article 14. So the classification under the said section is based on the intelligible differentia.

Class-legislation and reasonable classification the two different criteria under Article 14

The classification done under Article 14 should not be "arbitrary, artificial or evasive" as it should be based on real and substantial classification affording reasonable nexus to the object required to be accomplished by the legislation. Article 14 prohibits those circumstances where the equals are treated unequally without any reasonable cause. When equals and unequals are treated unequally in that case Article 14 does not come into scenario. Class legislation results in discrimination by providing privileges to persons arbitrarily preferred from a group of people. No reasonable distinction can be found

between the persons to whom such privilege has been given and the persons who are excluded from such privilege.¹³

In the case *Vijay Laxmi v. Punjab University and Others*¹⁴, it was observed that though Article 14 prescribes equality before law but since all persons are not equal by the virtue of their nature, sex, attainment or circumstances so a mechanical equality before law may leads to prejudice. It was held in the case that in the view of this principle a classification can be made between the male and female for the want of a principal in the girls' school and such classification shall be done on reasonable and justifiable grounds and as a result appointment of female principal or faculty would also be justified. So in the view of female students to be taught the motive behind appointing any female principal or faculty is just and reasonable. And in such cases where the State takes any policy decision and enact any rules then will be just and fair and will not be arbitrary or discriminatory. So such rules which give authority to employ only a lady for teacher or doctor or superintendent will not be in violation of Articles 14 or Article 16 (Equality of opportunity in matters of public employment) of the Constitution. Therefore it can be said that Article 14 prohibits antagonistic discrimination but not reasonable classification. Hence when a classification is done in a group where a the persons belongs to a particular class and such classification is done for special qualities, mode of recruitment, attributes and if they are treated differently and in that case the classification will be just and reasonable as to serve public interest and enhance members belonging to backward classes then in that case such classification shall amount to reasonable classification and will not be discriminatory. Article 14 has its application only in those circumstances where equals are treated differently without any reasonable cause but not there where the equals and unequals are treated differently. It is not like that woman would always get preference or say favorable provisions. Law takes into consideration the all circumstances and aspects of society.

In the case *Baghu Ban Saudagar singh v. State of Punjab*¹⁵, the Court upheld the order of the Governor of the Punjab interpreting women not eligible for all post in men's jail unless it is a job for clerk and the rationale given behind this was that the convicts in the jail were "*habitual criminals who were guilty of heinous crimes of violence*". So women doing such duty in the men's jail will possibly lead to dangerous and unsafe site for women than the men. The court laid down that such discrimination is not done only on the ground of gender but also on the social facts united with gender and maintaining administrative efficiency peace in jails.

So discrimination cannot be made only seeing the ground of gender but the all aspects of society should also be taken into consideration.

Women in Contemporary Era

The women are ill-treated in the every society of world and it is there so in India also, despite of the fact that Goddess are worshipped in Indian

society in the name of *Shakti* etc and violence is committed against her. The women face problems not only outside the house and considered as commodity, outraged of her modesty and pride but also she faces various problems like violence inside the house. Women in the society is deemed as an object in order to satisfy the requirement of male section of the society and reproduce children and are the real backward class of the society who have always been considered as downtrodden from the time where society started to begin.

Women in the society depend on the male section for living resources and are not provided with the economic resources. As it is considered that they should confine themselves to the domestic sphere doing all the household work for which she is not given any credit. Women in the society are discriminated not only on the basis of their gender but also due to grinding poverty. In the present era women are working and earning and because of this they have two responsibilities which they have to perform i.e. the household work and work of office. This has a lot of issue because of handling two responsibilities women are considered less productive and efficient in comparison to male counterpart and even one wrong step may result in losing the job. She has been unrecognized in the society since long time and has not been given status in the society equal to that of male. And since birth she faces various evil acts of discrimination in the society.

The men and women of the society are not equally treated so the safety measures which are given should also not be equal as it would be the violation of Article 14 of the Constitution of India. As when they are not situated equally they should be treated unequally.¹⁶

There are needed regulations for protection of the women's interest and such regulations for a particular sex cannot be held as unreasonable and ultra-vires to the Constitution of India. In *University of Madras v. Shanti Bai*,¹⁷ the court held that regulation was made for protection of women; some facilities could be accorded to women before they could be admitted and not allowing them admission in the University till such protective measures are taken, shall not be unconstitutional and would be within the reasonable restriction.

Women as a 'Class' For Discrimination

Article 14 of the Constitution of India prohibits class legislation but it permits reasonable restriction this can be apprehended from the classification and present day position of women in society. The classification done for this Article shall be reasonable based on 'intelligible differentia' and should have a 'rational nexus' with the aim required to be attained by the action or the law in question. Women can be considered as a class and enactment of laws could be made for their protections, which are special. Supreme Court of India has considered that 'women' is a class and various reasonable classifications for the upliftment have been allowed, also various provision within Constitutional framework have been declared as valid which are providing them

special treatment and have been declared as "permissive".

In *Sanaboina Satyanarayan v. Govt. of A.P.*,¹⁸ where a scheme was formulated for prevention of offense against women and also classifying prisoners into those who are guilty of such offences and those who are not guilty of such. Those prisoners who were guilty of crime against women challenged it saying that right to Equality had been deprived to them. Court held that there was reasonable classification to achieve some objective.

Discrimination under Article 15

The principle of equality (Article 14) is brought for general detail in Article 15 as well as in other succeeding Articles. Article 15 is limited to citizens of the country while Article 14 extends to all the persons because Article 15 confers personal right. This Article is for prohibition of discrimination on the grounds **only** of religion, race, caste, sex or place of birth under clause 1 of the Article. While under its clause (3) it says that the state is not prevented from enacting any special provision in favour of women and children.

The word 'discrimination' in this article means "making an adverse distinction with regard to or distinguishing unfavorably from others"¹⁹ and the word 'only' would mean that if discrimination is based on some ground which are not connected with religion etc., but some other rational factor, the discrimination would be valid²⁰.

If some special provisions are made only on the ground of sex would be discriminatory but the exclusion of women is done which is not exclusively based on sex but considering peculiar nature of duties to be performed by electricity workers is not in violation of article 15 of Constitution. In the case *Rajesh Kumar Gupta v. State of Uttar Pradesh*,²¹ court held that reservation of 50% of posts in favor of female candidates is not arbitrary. Reservation of certain posts exclusively for women were held as valid under article 15(3), article 15 covers every sphere of state action.²²

Various special legislative and executive measures in the favor of women are considered as valid by the court and clause (3) of article 15 has been widely resorted to. Also various provisions in criminal law or procedural law favoring women have been held as valid²³ and also the provisions of reservation of seats for women in the local bodies or in educational institutions are valid.²⁴

In *Dattatraya Motiram v. State of Bombay*²⁵, the court held that discrimination against men could be done by State on account of joint operation of Article 15(1) and Article 15(3) but not in favor of men against women. The reservation for women for seats in Municipality election was held to be protected by Article 15(3).

In *Girdhar Gopal v. State*²⁶, it was held that Section 354 of Indian Penal Code makes an assault or use of criminal force with intent to outrage the modesty of a woman, whether by a man or women, punishable, is based on a valid classification under Article 14 and is not violating Article 15(1). The section does not discriminate only on grounds of sex

but it also considers property, public morals, decency decorum and rectitude. This Principle was reiterated by J. Krishna Iyer in *Bai Tahira v. Hussain Fiddalli Chottua*,²⁷ the decision was held to be correct and held that it should be on the basis that section is covered by Article 15 (3) and under clause (3) of Article 15 discrimination can be done in favor of women but not against them, and this clause protects both the pre and post constitution laws.

For this reason, it can be affirmed that Article 15 does not contravene itself or Article 14. Provisions which are made under this article does not forbid reasonable discrimination which are made on the grounds which are valid considering the condition of women in society but it prohibits discrimination made only on the basis of sex. These discriminatory clauses are protected under Article 15 (3) empowering the state to make such provisions especially for women and children.

Conclusion

Article 14 guarantees equal protection of law but the Article does not mean that all the laws must be in general character, applying to the same persons and accomplishment of circumstances in the same position. There are different classes of people having different needs which keep on varying from time to time; such different needs are to be treated separately. On the basis of different nature of society different laws are needed and there is needed a legitimate control over the policies and for the laws which are enacted considering the interest of the state. When the circumstances are unequal they should be treated unequally and if identical treatment is done it would result into inequality. The reasonable classification which is permitted is necessary for a progressive society. Equality before law provided under Article 14 is not provided on the basis of mathematics to all persons in all the circumstances. The equality in treatment does not here mean that identical treatment should be done. The special provisions are enacted for protection of women and the discrimination here made is reasonable and law is not based on the gender. The present condition of women in the society demanded for women to be considered as a different 'class' and such class has been used for classification under article 14 and 15 of Indian Constitution. Women are not always favored in laws as there are laws which exclude women of any right considering their security. By the virtue of Article 15 (3) the Indian Constitution has provided to make the special provisions for empowerment and protection of women. So it can be said that Article 15 (3) contain the spirit of the Article 14 and the law is not based on gender.

References

Articles Referred

- Divya*, in her article, "A Study on the Rights and Privileges of Women in India," *Journal of Humanities and Social Science* Vol. 2 Issue 7, (2017)
- Hanumanthappa DG*, "Constitutional and legal provisions for women in India," *International Journal of Multidisciplinary Research and Development* Vol. 2 Issue 8, (2015),

Sutapa Saryal, "Women's Rights in India: Problems and Prospects," *International Research Journal of Social Sciences* Vol. 3(7), (2014)

Taufiqu Ahamad and Anil Kumar Mishra, "Legal status and rights of women in Indian constitution," *International Journal of Advanced Education and Research*, Vol. 1 Issue 1, (2016)

Cases Referred

- Baghu Ban Saudagar singh v. State of Punjab* AIR 1972 P&H 117
- Bai Tahira v. Hussain Fiddalli Chottua* (1979) 2 SCC 318
- Chiranjit Lal Chaudhary v. The Union of India and Other* AIR 1951 SC 41
- Dattatraya Motiram v. State of Bombay* AIR 1953 Bom 311
- Girdhar Gopal v. State* 1953 CriLJ 964
- John Vallamattom v. Union Of India*, AIR 2003 SC 2902
- Kathi Raning Rawat v. State Of Saurashtra* AIR 1952 SC 123
- Laxmi Khandsari v. State of UP* AIR 1981 SC 873
- Rajesh Kumar Gupta v. State of Uttar Pradesh* AIR 2005 SC 2540
- Sagar v State of Andhra Pradesh* AIR 1968 AP 165
- Sagir Ahmad And Ors. v The State Of Uttar Pradesh* AIR 1954 All 257
- Sanaboina Satyanarayan v. Govt. of A.P* AIR 2003 SC 3074
- Shersingh v. Ghansiram* AIR 1954 Raj 233
- Sri Srinivasa Theatre v. Govt. of T.N.* (1992) 2 SCC 643
- State of West Bengal v. Anwar Ali Sarkar* AIR 1951 Cal 150
- T. Devashan v. Union of India* AIR 1964 SC 179
- The State of Bombay v. F.N. Balsara* AIR 1951 SC 31
- Union of India v. K.P. Prabhakaran* (1997) 11 SCC 638
- University of Madras v. Shanti Bai* AIR 1954 Mad. 67
- Vijay Laxmi v. Punjab University and Others* AIR 2003 SC 3331
- West Bengal v. Anwar Ali Sarkar* AIR 1952 SC 75

Books Referred

- Arvind P. Datar*, *Commentary On The Constitution Of India* (2007)
- Basu Dd*, *Commentary On The Constitution Of India*, *Jain Mp*, *Indian Constitution Law*, Lexis Nexis, *Butterworths Wadhwa*, Nagpur, 6th Edn., Reprint (2012).
- Hm Seervai*, *Constitutional Law Of India*, Volume 3, 4th Ed., *Universal Law Publishing Company Pvt. Ltd.* (1996)
- M.P.Jain*, *Indian Constitutional Law*, 6th Ed., *Lexis Nexis Butterworths Wadhawa Nagpur*, (2010)

Footnotes

1. ARVIND P. DATAR, COMMENTARY ON THE CONSTITUTION OF INDIA (2007)
2. Sri Srinivasa Theatre v. Govt. of T.N., (1992) 2 SCC 643 (India).
3. AIR 1951 SC 41 (India).
4. AIR 1951 SC 31(India).
5. The test was clearly expressed by Das, J. in *State of West Bengal v. Anwar Ali Sarkar*, AIR

- 1952 SC 75 (India) and has been repeated in all the cases after that case.
6. *Laxmi Khandsari v. State of UP*, AIR 1981 SC 873 (India).
 7. *Sagir Ahmad And Ors. v The Govt. Of The State Of Uttar Pradesh*, AIR 1954 All 257 (India).
 8. *Shersingh v. Ghansiram*, AIR 1954 Raj 233 (India).
 9. AIR 1952 SC 123 (India).
 10. D.D. BASU, COMMENTARY ON CONSTITUTIONAL LAW OF INDIA (2007).
 11. AIR 1951 Cal 150
 12. *The Code of Criminal Procedure, section 437 (1973) -When bail may be taken in case of non-bailable offence.*
 13. M. P. JAIN, INDIAN CONSTITUTIONAL LAW (1962).
 14. AIR 2003 SC 3331 (India).
 15. AIR 1972 P&H 117 (India).
 16. *T. Devashan v. Union of India*, AIR 1964 SC 179 (India).
 17. AIR 1954 Mad. 67 (India).
 18. AIR 2003 SC 3074 (India).
 19. *Kathi Raning Rawat v. State Of Saurashtra*, AIR 1952 SC 123 (India).
 20. *John Vallamattom v. Union Of India*, AIR 2003 SC 2902 (India).
 21. AIR 2005 SC 2540 (India).
 22. *Union of India v. K.P. Prabhakaran*, (1997) 11 SCC 638 (India).
 23. *Girdhar Gopal v. State*, 1953 CriLJ 964 (India).
 24. *Sagar v, state of Andhra Pradesh*, AIR 1968 AP 165 (India).
 25. AIR 1953 Bom 311 (India).
 26. 1953 CriLJ 964 (India).
 27. (1979) 2 SCC 318 (India).