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## AN ANALYSIS OF ARTICLE 15 OF THE INDIAN CONSTITUTION

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### ABSTRACT

In this article, the author discusses an issue that may have been overlooked in the provision of social equality in Article 15 of the Indian Constitution.<sup>1</sup> Through many instances, this article tries to investigate this unexplainably and illustrate how Intersectionality is essential in navigating this issue. In the aforementioned article, the phrase “only” serves as a direct limitation that aims to prevent intersectional discrimination from being recognized in the Constitution. The study's findings reveal that discrimination can happen in two ways, depending on the basis: if the discrimination occurs in an intersectional way, it will include the bases under which the discrimination occurs, and if it occurs hierarchically, it will offer a solution for the accommodation of multiple bases.

**Keywords:** Article 15, Constitution, Equality.

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### INTRODUCTION

The Indian Constitution<sup>2</sup> will celebrate its 70th birthday on January 26, 2020. Because our Constitution is regarded to be relatively young in contrast to other Constitutions throughout the globe, our Constitution has experienced considerable revisions and has evolved for nearly seven decades. When the document was first released, it had 395 articles and eight schedules. Over the years, Wikipedia has gone from having just 30 Articles, to over 450. The site contains 12 schedules that are all related to a total of 104 amendments to the main Wikipedia article. Essentially, the major features of the Constitution, like legal survey, fundamental rights, federalism, and different issues, turned out to be helpless against change as a result of these revisions. Over the last few administrations, the Executive and Judiciary have disagreed with

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<sup>1</sup> 'Constitution Of India' (Constitutionofindia.net, 2021)

[https://www.constitutionofindia.net/constitution\\_of\\_india/fundamental\\_rights/articles/Article%2015](https://www.constitutionofindia.net/constitution_of_india/fundamental_rights/articles/Article%2015) accessed 10 June 2021.

<sup>2</sup> 'Constitution Of India | Legislative Department | Ministry Of Law And Justice | GoI' (Legislative.gov.in, 2021) <https://legislative.gov.in/constitution-of-india> accessed 10 June 2021.

each other more than they have agreed. When government power was attempted to be used based on rights that people had, courts declared such power null and void on several instances. Retaliation for this offence would mean that the government will re-enact the amendment to the Constitution that removed this impediment. Regardless, our Constitution has managed to withstand repeated assaults throughout the years, including during the periods of the Emergency.

### **ALL ABOUT ARTICLE 15 & ITS SCOPE**

The majority of our rights, even those which are of vital importance to us, are seldom absolute. Under the conditions permitted by our Constitution, it is theoretically possible for our most basic rights to be violated, and such violations are accepted by the law. An excellent example is Article 19(1) of the Constitution<sup>3</sup>, which outlines the rights included in the above sentences. These rights are only justified when principles specified in sub-articles have been respected. It should be noted that, despite there are no special cases for Article 21<sup>4</sup>, and even if the law is impartial, reasonable, and sensible, individual freedom may be infringed upon in an equal measure. As this Constituent Assembly is aware, this Assembly intends to analyze the aforementioned clause in Article 15 of our Constitution and propose a subjective restructuring of the same Article.

“Originally Article 9 in the draft of the Constitution, Article 15(1) Prohibits discrimination only on grounds of race, caste, sex, place of birth or any of them. Article 15(2) states that 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 concerning—

- (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.”

Members of the Constituent Assembly discussed Article 15 extensively on November 29, 1950. There was unanimous agreement on the need of having this Article in the Constitution to prevent discriminatory practices in the nation. When Syed AbdurRouf correctly pointed out that discrimination against inhabitants of a particular state may occur under the guise of local patriotism, the terms "place of birth" were added to this Article. Dr B.R. Ambedkar likewise requested that the phrase "state finances" be used instead of "state income," and with good cause. He pointed out that the term "state" was being used not just for the federal, provincial,

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<sup>3</sup> (Mea.gov.in, 2021) <https://mea.gov.in/Images/pdf1/Part3.pdf> accessed 10 June 2021.

<sup>4</sup> The Constitution Of India (PDF), pp. 6–20.

and state governments, but also for municipal governments. He desired that these essential rights apply to all bodies to avoid discrimination. Article 15 was therefore enacted, with a couple of these revisions in mind.

The term "discrimination" in the preceding clause, in our judgment, appears to contain a fundamental bias that is negative.<sup>5</sup> As per the current translation of this article, which has been shown in certain situations, discrimination is prohibited "just" for one of the above-mentioned reasons. It does not fall against Article 15(1) and (2) of the Constitution if it is combined with another kind of discrimination. It may fall under Article 14, but it does not fall under this one. As a result, the usage of the term "only" seems to have produced some misunderstanding through the years. To establish that the discrimination was justified, a State or Government just had to establish that, although one of the above-mentioned reasons, such as sex or place of birth, was included, another basis was matched with these reasons as well.

The meaning and posture of the term "only" were not specified in one of the early examples. The court on record in *Champakam Dorairajan*, Justice Vishwanatha Sastri of the Madras High Court, declined to place any weight on the term and said that the Article overall would be unaffected paying little heed to the presence of the expression "only." Notwithstanding, Justice Somasundaram's<sup>6</sup> perspective, and his conflict with the other appointed authority were upheld in the following instances, which said that the state might classify people based on caste in limited instances, as long as caste was not the main factor. The Court dismissed non-residents' arguments in the *Madhya Bharat* case in 1955, drawing a contrast amid "residence" and "place of birth," which had a comparative thought yet had diverse literary implications. As a result, even at a state-run medical institution, the Supreme Court upheld categorization based on "residence" and failed to prohibit discrimination. In *Anjali Roy v State of West Bengal*<sup>7</sup>, the Calcutta High Court followed the tendency of seeing sex discrimination that has been exclusively formed its basis on sex regardless of any other factor.

“An order passed at that time was restricting the admission of females in a male-honours college. The Court held that this restriction did not fall within the ambit of Article 15(1) and this rationale was based on the following interpretation: What the Article forbids is discrimination and discrimination based solely on all or any of the grounds mentioned in the Article (...) the

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<sup>5</sup> "Title VII Of The Civil Rights Act Of 1964 | U.S. Equal Employment Opportunity Commission" (Eeoc.gov, 2021) <https://www.eeoc.gov/statutes/title-vii-civil-rights-act-1964> accessed 10 June 2021.

<sup>6</sup> The Nation and Human rights, 'History Of Betrayals' (Frontline, 2021) <https://frontline.thehindu.com/the-nation/human-rights/article25037426.ece#> accessed 10 June 2021.

<sup>7</sup> *Anjali Roy v State of West Bengal* (1952) AIR 1952 Cal 822

discrimination which is forbidden [in Article 15(1)] is only such discrimination as is based solely on the ground that a person belongs to a particular race or caste or professes a particular religion or was born at a particular place or is of a particular sex and on no other ground. Discrimination based on one or more of these grounds and also on other grounds is not hit by the Article.”

The above-written statements are entirely contradictory, but the finest part of this decision was the final finding, which seemed to be founded on none of the earlier. The Court found that there was no segregation dependent on sexual orientation, but that the limit was imposed “due to the adoption of a comprehensive program for providing education facilities to both male and female students.”

As a result of the above, it may be concluded that the interpretation of article 15(1) has resulted in both uncertainty and ambiguity. Intersectional discrimination seems to have been overlooked by the courts in their reading of the article. In basic words, intersectionality is when one's political and social identities collide, putting that individual at a disadvantage. ShayaraBano v. Union of India is an excellent illustration of how several grounds of discrimination, in this instance sex and religion, combined to create a unique disadvantage. “Kimberlé Crenshaw introduced intersectionality as a theoretical application within the legal realm in her 1989 piece, which demonstrated that to completely eradicate patriarchy and racism, we must consider those who are located at its intersection. For example, a black woman's experiences with discrimination could be described in two intersections, one with their race and the other with their geographies.”

Utilizing the article in its current understanding gives a simple proviso to connect a consideration with the first segregation, <sup>8</sup>thus the courts must interpret it to enable actual and different experiences inside the article's scope. There was a claim of discrimination for women workers under article 15(1) in *Air India vs Nergesh Mirza*<sup>9</sup>, but the Court rejected the claim, stating that discrimination was not only based on sex but was also based on other factors, thus fell beyond the scope of article 15. (1). The given view stemmed purely from a misunderstanding of the term "only," implying that discrimination must be based entirely on one reason and that discrimination based on numerous grounds is not covered. There is two significant justification for the recreation of this statute: first, it has been misread, and oppressive use of the arrangement has been made just dependent on a single word (Only); and second, the constitution

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<sup>8</sup> 'School Segregation And Integration | Articles And Essays | Civil Rights History Project | Digital Collections | Library Of Congress' (The Library of Congress, 2021) <https://www.loc.gov/collections/civil-rights-history-project/articles-and-essays/school-segregation-and-integration/> accessed 10 June 2021.

<sup>9</sup> *Air India vs Nergesh Mirza*, (1981) 1981 AIR 1829

writers may not concur with the court's translation.<sup>10</sup> The title itself gives it away: "prohibition of discrimination based on religion, race, caste, sex, or place of birth." While titles may not be decisive in characterizing the degree of an arrangement, they are in any case a valuable "inside help" in explaining the importance in case of uncertainty. What's more, there's an internal interpretation discrepancy with the term "only" itself. The reasons of article 15(1) have also been referred to be comprehensive, owing to the term "only" in certain readings. This was clarified in *Naz Foundation v Delhi Administration*<sup>11</sup>, in which reasons of "sexual orientation" had been seen in correspondence with the reasons of article 15 (1), contradicting the option that it was a comprehensive as well as complete list.

A former Justice of the South African Constitutional Court<sup>12</sup> made one intriguing observation based on intersectional discrimination. "A poor Dalit hard of hearing lesbian in a wheelchair is significantly more helpless and needing established security than a female college educator who has every last bit of her resources and is an individual from the "predominant" classes. Constitutional jurisprudence may suffer if this is not recognized. And there's no need to restrict protection to the Constitution's clearly stated grounds."

The goal of the constitution-makers, who are unlikely to agree with the readings of the article as we have seen it, also supports the reorganization of this jurisprudence. To begin with, there is no mention of the grounds of discrimination being comprehensive in the constituent assembly deliberations. Second, in constituent assembly deliberations, the term "only" is virtually ever spoken. It's fair to infer that the term "only" was omitted entirely from the article's early draughts. It makes an excellent point. Notice how the phrase "the word 'only' does not seem to be the most correct interpretation of the text" contributes to that thought. Fortunately, present-day Indian courts have endeavoured to incorporate multifaceted separation within the extent of Article 15 (1) in cases like *Navtej Singh Johar v. Union of India*<sup>13</sup>, where the court gives practically no consideration to the expression "just" for the understanding of Article 15, as has happened beforehand in cases like *Neeraj Singh Johar v. Union of India*. Criticizing authors' commands to use an "egregious misinterpretation" in their examination of the *Air India* case, Chandrachud J also explains that he takes issue with their "ignorance of the reality that bias functions in several realms." As it turns out, an investigation into the *Nergesh Meerza* case found that the gender bias was entirely based on the gender of the applicants. While the court

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<sup>10</sup> 'A. V. Dicey: Law Of The Constitution' (Constitution.org, 2021) [https://constitution.org/1-Constitution/cmt/avd/law\\_con.htm](https://constitution.org/1-Constitution/cmt/avd/law_con.htm) accessed 10 June 2021.

<sup>11</sup> *Naz Foundation v Delhi Administration*, (2016) 15 SCC 619

<sup>12</sup> 'Home' (Concourt.org.za, 2021) <https://www.concourt.org.za/> accessed 10 June 2021.

<sup>13</sup> *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1

concluded that the bias depended on sex in addition to different reasons, it didn't question the establishment of these "other factors," which were in actuality justifications for discriminatory practices based simply on sex. In other words, since the case of Navtej Johar included just sexual discrimination, not intersectional discrimination, it became an example of sex discrimination. ShayaraBano is a better example of intersectional discrimination than the Air India case since that case highlights the ineffectiveness of how an erroneous and accidental interpretation of article 15(1) was used for personal advantage. by failing to take the meaning of "only" presented in the NergeshMeerza ruling into consideration, the Supreme Court in NavtejJohar has shown itself as a court of law that bases discrimination findings on a contextual interpretation of the word under Article 15" (1). But, a clear demonstration of the incorporation of an intersectional lens must be provided to determine whether an intersectional lens has been adopted since that would permit as well as perceive a case that makes several claims under Article 15. Although article 9 (3) of the Constitution of South Africa references intersectional discrimination as having occurred on multiple grounds, such as race, colour, sex, sexual orientation, physical ability, religion, nationality, age, and socioeconomic status, it is less ambiguous than India's Constitution in that the words "on one or with more than one of the grounds" are used. "No one shall, directly or indirectly, be discriminated against or excluded from participation in, be denied the benefits of, or be subjected to any form of discrimination on one or more grounds, including race, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language, or birth," says Article 9 (3) of the South African constitution. Even the Canadian Charter of Rights and Freedoms<sup>14</sup>, which appears to have made a specific reference to intersectional discrimination, recognizes it. Each individual is equivalent under the watchful eye of law and has the right to approach assurance and equivalent advantage of the law without separation, including without segregation dependent on race, public or ethnic beginning, colour, religion, sex, age, or mental or physical inability, as expressed in Section 15(1) of the Charter. The court has previously stated that the list given is not comprehensive, for example, this provision has historically been used to discriminate based on conjugal status, sexual direction, and citizenship, among other factors such legislation avoid any grey areas or loopholes for judges to exploit, and hence the essence of the law is easily apparent

Although this country has not yet adopted all of the means to prevent intersectional discrimination, it is important to keep in mind that numerous meanings for a term in the constitution are usually given during constitutional assembly debates, which makes interpretation

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<sup>14</sup> (Canada.ca, 2021) <https://www.canada.ca/content/dam/pch/documents/services/download-order-charter-bill/canadian-charter-rights-freedoms-eng.pdf> accessed 10 June 2021.

of the term more difficult. Additionally, constitutional assemblies usually seek to decipher the true meaning of articles so that any misunderstanding or loophole is avoided. Finally, given the possible error of misinterpreting the word “gender” or avoiding any possible loopholes, the new wording of the article would read as given: “The State shall not discriminate against any citizen on one or more grounds of religion, race, caste, sex, place of birth, gender, or disability.”

Alike modifications have to be made to Article 15(2) of Constitution, which will from present contain aforesaid language, as well as the words "or on one or more reasons," in place of "alone." No citizen shall be dependent upon any inability, obligation, limitation, or condition concerning (a) Admittance to shops, public cafés, lodgings, and castles of public diversion on at least on grounds of religion, race, standing, sex, residence, gender, or handicap; or (b) Admittance to public amusement on at least on grounds of religion, race, position, sex, residence, gender, or incapacity; or (c) Admittance to public amusement on at least on grounds of religion, race, caste ;(d) The utilization of public wells, tanks, washing ghats, parkways, and spots of the public hotel that are either entirely or partially funded by the state or devoted to the general public's use.

The assembly has also suggested that “gender” and “disability” be included in the scope of article 15(1). (2), Although it is clear from the Naz rationale that similar reasons are within the scope of article 15, we believe the article may be more detailed and accommodating to reduce widespread discrimination. The terms sex and 'gender' were used interchangeably in India since they had similar connotations. However, by 2020, none of these words will be comparable.

## CONCLUSION

Reflecting on the 2015 case of National Legal Services Authority v. Union of India, in which the Apex Court perceived the third sex and gave a milestone ruling that guided the state and local governments to give legitimate personality to any sex, male, female, or third sex, the assembly acknowledges its moral responsibility for using the term "disability" in Article 15. As human beings, we must aspire to be better and to do so, we must create a more inclusive atmosphere. To propose this, we ask that courts and other institutions in India comply with the specific standards defined in the Indian Code of Rights for Persons with Disabilities Act, 2016<sup>15</sup>. After a thorough assessment of Article 15 of the Constitution, our Constituent Assembly will put up suggestions for further revisions that will be made to be more inclusive without any regard for discrimination.

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<sup>15</sup> (Indiacode.nic.in, 2021) [https://www.indiacode.nic.in/bitstream/123456789/2155/1/A2016\\_49.pdf](https://www.indiacode.nic.in/bitstream/123456789/2155/1/A2016_49.pdf) accessed 10 June 2021.