

Need for anti-discrimination law

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"The law must be clear that anti-discrimination laws exist to protect people. Not beliefs."- Terry Sanderson

"Anti-discrimination laws are the foundation to ensuring that people of colour are treated equally. We will vigilantly defend any law, regulation, or ordinance that is designed to ensure equal treatment to all borrowers in the mortgage process."

India has a unique distinction of being a democracy without comprehensive legislation to back the constitutional right of equality. This lack of legislation gives rise to certain issues. Every time the case of discrimination is brought the discriminating party claims that he is at liberty to do so. Not only this, in a certain case, the Supreme Court also endorsed such restrictive interpretation.

There are a lot of religions, castes, languages in which the people of one region vary from the another one. It's all is fine and no one has issue with this but what creates the problem is just that people began to discriminate other on the basis of these categories so which is really neither good for development of society nor the the development of the nation. Daily we hear many cases that dalits have been tortured by the upper caste people. There was a case some days earlier that a 20-years-old dalit man was allegedly chased and beaten to death in Pimple Saudagar suburb of Pune and it was the report of an intercaste relationship with a woman belonging to an 'upper-caste'.

Is it really fair to them? Whether what happened to them was right? The main reason is the mean old thinking of people. Everyone say that they are becoming modern but it is only in dressing and living lifestyle but not in the thinking level. They should know the difference between both type of modernities. There is a great need to make them realize that the religions and castes were all made just to categorize people on the basis of their work so that one kind of community or group of people doing same work could live together and there would be easy excess to the work but all this has created a mentality in the mind of people that people having low caste are now allowed to talk with the upper class people or a person belonging to another religion is an enemy for the other. Everybody wants to spread his own religion so that no. of community people can increase in that religion instead of actually realizing the true teaching and need of the religion.

So, by all these means people have been getting discriminated for many years and it is not happening now only, even these cases were more in the past time than now. Now all this is happening and making people anger who are against such kind of discrimination. There must be some strict law or rule so that everyone should be treated equally. There is again a big need to establish the right to equality in this society and country so that innocent people could get justice.

Indirect and unintended discrimination :

Our society remains rife with structural discrimination even after the independence of more than 70 years. These prejudices, which pervade every aspect of life, from access to basic goods, to education and employment, are sometimes manifest. But, on other occasions, the discrimination is indirect and even unintended.

The forms that it takes were perhaps best explained by the U.S. Supreme Court's ruling in *Griggs vs. Duke Power Co.* (1971).

There, the court held that an energy company had fallen foul of the U.S. Civil Rights Act of 1964 – which made racial discrimination in private workplaces illegal.

The company had insisted on a superfluous written test by applicants for its better entry-level jobs.

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Although, on the face of it, this requirement was race-neutral, in practice it allowed the company to victimise African-Americans.

In a memorable judgment, invoking an Aesop fable, Chief Justice Burger wrote that “tests or criteria for employment or promotion may not provide equality of opportunity merely in the sense of the fabled offer of milk to the stork and the fox.”

On the contrary, the law, he said, resorting again to the fable, “provided that the vessel in which the milk is proffered be one all seekers can use.”

That is, that it wasn't merely “overt discrimination” that was illegal but also “practices that are fair in form, but discriminatory in operation”.

Let's look into 2 cases in India

1. Madhu vs. Northern Railway

The verdict in *Griggs* was notably applied in the Delhi High Court's 2018 judgment in *Madhu vs. Northern Railway* where the Railways had refused free medical treatment to the wife and daughter of an employee. Instead they have been entitled to under the rules. The Railways contended that the employee had “disowned” his family and had had their names struck off his medical card.

The court held that to make essential benefits such as medical services subject to a declaration by an employee might be “facially neutral”, but it produced a disparate impact, particularly on women and children.

But while this case concerned discrimination by the state, entry barriers to goods such as housing, schools and employment tend to function in the realm of private contracts. Is Article 15 applicable in private contracts?

The Constitution is markedly vocal on this too.

Article 15(2) stipulates that citizens shall not on grounds only of religion, race, caste, sex, or place of birth be denied access to shops, public restaurants, hotels and places of public entertainment.

Yet, on occasion, this right, which applies horizontally, inter se individuals, comes into conflict with the rights of persons to associate with others, often to the exclusion of certain groups.

2. Zoroastrian Cooperative Housing Society vs District Registrar Co-operative Societies (Urban) and Others

This is why every time a case of discrimination is brought, the party that discriminates claims that he possesses a liberty to do so, that he must be free to act according to his own sense of conscience.

The Supreme Court in 2005 endorsed one such restrictive bond, when it ruled in favour of a bye-law of a Parsi housing society that prohibited the sale of the property to non-Parsis. This right to forbid such a sale, the Court ruled, was intrinsic in the Parsis' fundamental right to associate with each other.

But in holding thus, the judgment, as Gautam Bhatia points out in his book, *The Transformative Constitution*, not only conflated the freedom to contract with the constitutional freedom to associate but also overlooked altogether Article 15(2). Let's look into the scope of Article 15(2)

At first blush, Article 15(2) might appear to be somewhat limited in scope. But the word "shops" used in it is meant to be read widely.

A study of the Constituent Assembly's debates on the clause's framing shows us that the founders explicitly intended to place restrictions on any economic activity that sought to exclude specific groups. For example, when a person refuses to lease her property to another based on the customer's faith, such a refusal would run directly counter to the guarantee of equality.

India: A country with no legislative backing to the fundamental right to equality India is unique among democracies in that a constitutional right to equality is not supported by comprehensive legislation. Even though the rule of right to equality has been established but many people are facing discriminating behaviour and few actions are taken against that. In South Africa, for example, a constitutional guarantee is enforced by a universal law which prohibits unfair discrimination not only by the government but also by private organisations and individuals. Conclusion:

Any reasonable concept of justice will demand that we look beyond the motives of our actions, and on the covered structures of society. To that end, the idea of creating a law that will help improve our ways of life, which will help reverse our deeply rooted culture of discrimination, is worth thinking about. In this country which is full of diversity, it is very important that any kind of discrimination should not take place to maintain humanity and peace among the people. So government should also take strict step towards it so that any innocent could not be discriminated.

-- by Swati Gupta

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Navigated to Need for anti-discrimination law