
RIGHT AGAINST DISCRIMINATION - AN ANALYSIS

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ABSTRACT

India is a secular, democratic, and republican country that has created all of the necessary provisions to safeguards and protect the interests of its citizens. Fundamental rights are those, that are necessary for citizens of India to develop intellectually, morally, and spiritually. These rights are fundamental or necessary for an individual's existence and overall growth. Therefore, it is known as fundamental rights. They are found in Part III of the Indian Constitution. All citizens have fundamental rights, regardless of their, race, birthplace, religion, caste, or gender. Even though the Indian constitution prohibits discrimination against citizens, people belonging to a certain caste or religion but they are still discriminated and are treated as less by a society. Discrimination occurs when you are discriminated against or treated at a disadvantage to others under similar circumstances. Discrimination has a variety of causes and can affect people of race, ethnicity, country and social origin. Another major problem in today's world is the discrimination faced by many, especially women and children, as they live in poverty or extreme poverty.¹ Discrimination may so affect how people are treated in various aspects of society, including politics, education, employment, social, law enforcement, and the administration of justice in general, to a greater or lesser extent. This Paper dicusses about How discrimination occurs, grounds of discrimination, constitutional provisions regarding discrimination, rights against discrimination.

Key Words: Discrimination, equality, rights, race, religion, etc.

¹ Article 14: Protection from discrimination, "EQUALITY AND HUMAN RIGHTS COMMISSION"2021, <https://www.equalityhumanrights.com/en/human-rights-act/article-14-protection-discrimination>.

INTRODUCTION

Discrimination takes many forms and can be found not only in government or public entities, but also in civil society. Discrimination refers to unjust or preferential treatment based on caste, class, gender, religion, country, and other factors. Discrimination occurs when a person is denied the same access to his or her human or other legal rights as others. Discrimination causes a person's rights and interests to be violated. It occurs when a person's basic rights are violated. Discrimination is a that activity which contributes to inequity.

It can also be aimed at people of various cultural, linguistic, or religious backgrounds, those with impairments or the elderly, and people living with HIV or AIDS, for example. People may also face discrimination based on their sexual orientation or preferences.

Despite the progress made in many countries, gender discrimination is still prevalent. Women's rights to represent matrimonial property, the ability to inherit on an equal footing with men, and the freedom to work and travel without their husbands' permission are still denied by law. Women are also more vulnerable to violent and abusive practises, which persist unabated in many countries, and they frequently face double discrimination as a result of their race or ethnicity as well as their gender.

These situations may push individuals to migrate, and they have aided in the rise in human trafficking, particularly among women and children, who are routinely subjected to physical restraint, assault, and intimidation.

Equality ensures that all people are born free and equal. Equality presupposes that all people have the same rights and deserve the same respect. Everyone has the right to be treated equally. This means that the laws, policies and programs must not be discriminatory and that government agencies must not apply or enforce the laws, policies and programs in a discriminatory or arbitrary manner.

GROUNDS OF DISCRIMINATION

Non-discrimination is a key component of the equality concept. It assures that no one's rights are infringed upon because of race, colour, sex, language, religion, political or other beliefs, national or social origin, property, or birth. Discrimination on certain other grounds, in addition

to those above, may be illegal. Age, nationality, marital status, handicap, location of residency within a country, and sexual orientation are among the grounds.²

Religion: This means that no one should be denied access to any public place or policy by the state or any organisation because of their religion.

Race: Race should not be used as a reason for discrimination. Citizens of Afghan descent, for example, should not be treated differently than citizens of Indian heritage.

Caste: Discrimination based on caste is also forbidden in order to avoid uppercaste atrocities against the lowercaste.

Gender: A person's gender shall not be a valid basis for discrimination in any case. Discriminating against transgender people, women, and so forth is an example.

Place of Birth: A person's birthplace should not be used as a basis for discriminating against other members of society.

Therefore, discrimination violates the principle of equality.³

DIRECT AND INDIRECT DISCRIMINATION

DIRECT DISCRIMINATION

Direct discrimination occurs when an individual or a group of individuals is treated unfairly or prejudicedly. It is a system that prevents an individual or a group of individuals from accessing society's services or provides them with insufficient possibilities because they belong to different religions, castes, classes, or genders. It occurs when chances are open to everyone in society, but a person from a different caste or gender is overlooked, despite the fact that they are capable of taking advantage of the opportunity and have met all of the conditions.

Direct discrimination occurs when an explicit differentiation is made between groups of people, resulting in persons from some groups being unable to enjoy their rights to the same extent as individuals from other groups. A regulation that compels women, but not men, to submit proof

² *Rights of equality and non-discrimination*, "AUSTRALIAN GOVERNMENT, ATTORNEY GENERAL'S DEPARTMENT", <https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/rights-equality-and-non-discrimination>.

³ *Grounds of discrimination: definitions and scope of protection*, "OHRC", <http://www.ohrc.on.ca/en/iii-principles-and-concepts/3-grounds-discrimination-definitions-and-scope-protection>.

of a certain degree of education as a prerequisite for voting, for example, would be direct sex discrimination.

In the Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ) community, for example, members of this group are frequently discriminated against in a variety of ways. Because they are of a different gender, these persons are marginalised in society. People from these neighbourhoods have a hard time finding job, and even when they do, they are not considered for higher positions. Simply strolling down the street is difficult for them; cis-gender individuals frequently ridicule and mock them for acting or clothing in a different way. The trauma of being treated unfairly is extremely difficult to overcome, and it causes a person to lose their desire to live in society.⁴

INDIRECT DISCRIMINATION

"The term" indirect "discrimination clearly refers to" neutral "laws, practices, or standards, which apply equally to all, but ultimately give priority to one group over another. "

Indirect discrimination occurs when there are some rules and regulations that apply to everyone in society, yet they generate issues and disadvantages for specific individuals or groups of individuals because they are different in some way. Indirect discrimination is illegal if the person is treated unfairly based on characteristics such as caste, sex, gender, race, nationalism, and so on.

When a legislation, policy, or practise is presented in neutral terms (that is, no explicit distinctions are made), yet nevertheless disproportionately disadvantages a specific group or groups, this is known as indirect discrimination. For example, legislation that requires everyone to have a certain level of education as a prerequisite for elections is indirect to all groups that are unlikely to achieve that level of education (such as disadvantaged ethnic groups or women) has a discriminatory effect.

Equal rights should be prioritized in the workplace. To promote equality, business owners need to adopt the guidelines and regulations necessary to avoid any form of discrimination. However, the company has some universal policies that are designed to apply to everyone, but

⁴ *Discrimination*, "AMNESTY INTERNATIONAL", <https://www.amnesty.org/en/what-we-do/discrimination/>.

the effects of this type of regulation are occasionally unfair to an individual or group of individuals due to their differences in features.

Though the person intends well and has no grudges towards any community, the universal regulations may inadvertently harm some people's emotions or make them feel marginalised because they belong to a particular gender, caste, religion, or nation.

Cases of indirect discrimination

1. In a corporation where a promotion for the position of general manager is to be held, one male and one female employee were selected for this position since their qualities met the standards. The female employee had more experience in the field than the male employee. When asked why the female employee was not promoted, the business's president stated that "we needed a person who could work full time and travel whenever the company required." This scenario is a typical example of indirect discrimination that females experience in the workplace because they are perceived as less capable than men, and the employer sometimes feels her family will not allow her to do this much work.⁵

2. A person's age might be used to discriminate against them in an indirect way. For example, a law firm is employing associates, and the prerequisite for recruitment is a minimum of 10 years of professional experience. By making age a critical consideration, the corporation is discriminating based on age, as there may be more young people out there who are skilled and have some innovative ideas about how to operate. It is incorrect to deny them an opportunity simply because they are just getting started.⁶

3. A person's race can also be used to discriminate against them in an indirect way. Even though a person is qualified to work in the United Kingdom and has graduated from a UK educational institution and has some work experience, if they move to the United Kingdom in search of work, the condition for being hired is that they have a graduation degree from a UK educational institution.

4. Religious discrimination can also be done in an indirect way. A, a Christian man, works in a watch showroom, and the manager informs all of the staff that no one will be getting a

⁵ Shikha Pokhriyal, *A critical analysis of discrimination and various forms of discrimination*, "I PLEADERS" 2021, <https://blog.iplayers.in/critical-analysis-discrimination-various-forms-discrimination/>.

⁶ Id.

vacation for at least a month from now on. Because of the new business policy, a person who is expected to attend church on Sundays will be unable to do so. A tries to talk to his boss about it, but he refuses, claiming that giving him even a half-day would be unfair.

Indirect discrimination in India

In India, the term "indirect discrimination" is not often used. As a result, there are currently no legislative provisions in place in India to oversee indirect discrimination. However, the Supreme Court, in one of its decisions, brought the concept of "indirect discrimination" into Indian law. The bench was led by Justice D Y Chandrachud, who stated that the main difference between direct and indirect discrimination is that direct discrimination cannot be justified because it is done on purpose, whereas indirect discrimination can be justified because it does not make anyone feel inferior. Indirect discrimination occurs when facially neutral criteria are applied without examining the underlying impact of the rule or practise, according to Justice Chandrachud.

When 86 female short service commission officials demanded equality in the implementation of standards for permanent commissions, the Supreme Court introduced the notion of indirect discrimination. The criteria imposed at first looked to be impartial, but they were patriarchal and showed an attitude of discrimination against women, according to the Court in the case. During the hearing, the Supreme Court stated that new laws are needed to cover the idea of indirect discrimination.

CONSTITUTIONAL PROVISIONS AGAINST DISCRIMINATION IN INDIA

Through its several fundamental rights, the Indian Constitution prohibits discrimination:

EQUALITY RIGHTS (ARTICLES 14 – 18):

- According to **Article 14 of the Indian Constitution**, no one shall be denied equality before the law because of their membership in a particular community. "The State shall not deny to any individual within the territory of India equality before the law or equal protection of the laws," says Article 14 of the Indian Constitution. While the aforementioned Article directs the State not to deny anybody 'equality before the law,' it also commands the State not to refuse anyone 'equal protection of the laws.' Discrimination is prohibited by equality before the law. It's a negative concept. In order to achieve equality

among all people, the concept of "equal protection of the laws" requires the state to provide particular treatment to people in certain situations. It is a positive concept. As a result, the inevitable implication is that equals should be treated equally, whereas unequals should be treated unequally.⁷

In the case of *Air India v. Nargesh Meerza*, the court ruled in favour of the plaintiff. Regulation 46 of the Indian Airlines regulations states that an air hostess must retire from the service when she reaches the age of 35, or when she marries within four years of service, or when she has her first child, whichever comes first. However, under regulation 47 of the regulation act, the managing director has the discretion to extend the age of retirement one year at a time beyond the age of retirement up to the age of 45 years if an air hostess is found medically fit. The court ruled that dismissing an air hostess due to pregnancy was unfair and arbitrary, and that it was a violation of Article 14 of the Constitution of India. The regulation did not prohibit marriage after four years, and if an air hostess became pregnant after meeting the requirements, there was no reason why her first pregnancy should prevent her from continuing to work. According to the court, terminating service based on pregnancy was obviously unreasonable and arbitrary, and thus a breach of Article 14 of the Indian constitution.

- **Article 15 of the Constitution of India** protects citizens from discrimination of all kinds by the state based on religion, race, caste, gender, place of birth, or one of them. However, this article does not prevent the state from making special provisions for women or children. It also allows the state to make special provisions for socially and economically disadvantaged groups in order to help them advance. Scheduled Castes (SC) and Scheduled Tribes (ST) are also affected.⁸
- **Article 16 of the Constitution of India** guarantees equal opportunity in public work and prohibits the State from discriminating on the basis of religion, race, caste, sex, descent, place of birth, residency, or any combination of these factors. This article also gives the state the authority to make specific provisions for backward classes, under-represented states, and SC and ST for state-funded positions. In some cases, local candidates may be given preference for particular positions. Reservation of positions in religious or

⁷ Uma, *Right To Equality- A Fundamental Right*, "LSI E-JOURNAL", <http://www.legalservicesindia.com/article/1688/Right-To-Equality--A-Fundamental-Right.html>.

⁸ Kairali, *Article 14 And 15 Of The Indian Constitution-Eradicate Discrimination And Bring Equality*, "LSI E-JOURNAL", <https://www.legalserviceindia.com/legal/article-2754-article-14-and-15-of-the-indian-constitution-eradicate-discrimination-and-bring-equality.html>.

denominational institutions for persons of a certain religion or denomination will not be considered illegal.

The Constitutional Right to Equality is enshrined in Articles 14, 15, and 16. Articles 15 and 16 are instances of equality guarantees that give effect to Article 14. Articles 15(4) and 16(4), on the other hand, were initially seen as exceptions to Articles 15(1) and 16(1).

"Thus, there is no doubt that Article 15(4) has to be regarded as a proviso or an exception to Articles 15(1) and 29(2)," the court declared in *M.R. Balaji v. State of Mysore*.⁹

*Indra Sawhney v. Union of India*¹⁰, a 9-judge bench of the Hon'ble Supreme Court resolved this question, upholding the precedent established in Thomas' decision that Articles 15(4) and 16(4) were not exceptions to Articles 15(1) and 16(1), but rather an unequivocal proclamation of equality. As a result, equality, as defined by our Constitution, entails not only guaranteeing formal equality but also ensuring actual and absolute equality.

Articles 14 and 15(1) permit and propose classification as a means of achieving the Constitutional Goal of true equality. Articles 15(4) and 16(4) follow from Articles 15(1) and 16(1), respectively, and cannot be deemed exceptions to Articles 15(1) and 16(1). Once it is proved that Articles 15(4) and 16(4) are not exceptions to the equality requirement, but rather actual methods to achieve the equality duty stated in Article 14, the State is obligated to eliminate inequities and backwardness. The State's obligation stems from the mandate of equality enshrined in Article 14.

- The practise of untouchability is prohibited by **Article 17 of the Indian Constitution**. If someone continues to practise untouchability, they will face legal consequences. The term "untouchable" is not defined in the legislation, but it signifies that physical contact between members of minority communities and members of higher classes would contradict or hurt their values. Untouchables are not permitted to worship at the same temple. They face discrimination since they are not permitted to adopt the same practises as the upper caste. This is a type of discrimination in which a person's fundamental rights are taken away and they are deprived of their lives.

⁹ AIR 1963 SC 649.

¹⁰ 1992 (Supp) 3 SCC 217.

FREEDOM RIGHTS (ARTICLES 19 – 22):

- **Article 19 of the Constitution of India** deals with protection of certain rights regarding freedom of speech, etc. Article 19(1) of the Constitution reads as under: All citizens shall have the right:

- (a) to freedom of speech and expression;
- (b) to assemble peaceably and without arms;
- (c) to form associations or unions;
- (d) to move freely throughout the territory of India;
- (e) to reside and settle in any part of the territory of India; and
- (f) omitted
- (g) to practise any profession, or to carry on any occupation, trade or business.

The rights guaranteed in Article 19(1) are subject to reasonable constraints in Articles 19(2) to 19(6).

In *Maneka Gandhi v. Union of India*¹¹, the inter-relationship between Articles 14, 19, and 21 was observed, "The law, therefore, must be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of "personal liberty" and thus no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19, would have to meet the challenge of that right." After the rulings in the R.C. Cooper, Shambhu Nath Sarkar, and Haradhan Saha cases, this proposition is no longer debatable. Now, if a law depriving a person of "personal liberty" and prescribing a procedure for that purpose within the meaning of Article 21 must pass the test of one or more of the fundamental rights conferred under Article 19 that may be applicable in a given situation, it must also pass the test of Article 14."

¹¹ (1978) 1 SCC 248.

In *Minerva Mills Ltd. v. Union of India*¹², Chandrachud, C.J., as he then was, observed: “Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake They are Articles 14, 19 and 21.”

"The concept of an open government is the direct emanation from the right to know, which appears to be implied in the right to free speech and expression provided under Article 19(1)(a)," the Supreme Court of India concluded in *S.P. Gupta v. Union of India*¹³. As a result, public disclosure of information about government operations must be the rule, with confidentiality justified only when the most stringent public interest demands it."

- **Article 20 of the Constitution of India** deals with protection in the event of a criminal conviction. It restricts the State's ability to enact and enforce criminal legislation, which it would otherwise have under Article 21. "No person shall be convicted of any offence unless for violation of a law in force at the time of the performance of the act charged as an offence," says Article 20(1) of the Constitution. Article 20(2) is intended to safeguard a person from being prosecuted and convicted for the same offence more than once (*Maqbool Hussain v. State of Bombay*, AIR 1953 SC 325). Article 20(3), which protects a person against self-incrimination, has been termed a "humane" provision. It protects a person accused of a crime from being forced to testify against oneself as a witness. This is in line with the phrase "according to procedure established by law," which is contained in Article 21 and encompasses reasonable and fair trials.
- **Article 21 of the Constitution of India** says Protection of life and Personal Liberty. “No person shall be deprived of his life or personal liberty except according to procedure established by law”. It is clear from the text of the article that this language is negative. Article 21, on the other hand, grants everyone the fundamental right to life and personal liberty. It recognises the sanctity of human life and is the most basic of human rights.

In *Maneka Gandhi v. Union of India*¹⁴, the Court examined at the decisions in the cases of A.K. Gopalan, R.C. Cooper, and Kharak Singh in depth. "The word "personal liberty" in Article 21 has the broadest scope, covering a number of rights that go to constitute man's personal

¹² (1980) 3 SCC 625.

¹³ 1981 Supp SCC 87.

¹⁴ (1978) 1 SCC 248.

liberty, and some of them have been elevated to the level of independent basic rights and given further protection under Article 19," it was noted.

It was also pointed out that any law restricting a person's personal liberty must pass a three-part test: (i) it must prescribe a procedure; (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 that may be applicable in a given situation; and (iii) it must also be subject to scrutiny under Article 14. Because Article 14's standard also applies to Article 21, the law and process authorising interference with personal liberty and the right to privacy must be right, just, and fair, rather than arbitrary, whimsical, or oppressive. If the procedure proposed does not meet Article 14's requirements, it is not a procedure at all, as defined by Article 21.

- In certain circumstances, **Article 22 of the Constitution of India** gives protection from arrest and detention. In terms of preventative detention, it is not a comprehensive set of constitutional safeguards. Article 21 deals with issues that aren't explicitly or indirectly addressed in Article 22.

THE ROLE OF JUDGES, PROSECUTORS AND LAWYERS IN PROTECTING PERSONS AGAINST DISCRIMINATION

Judges, prosecutors, and lawyers all have an important role in protecting people from prejudice. Their job is to ensure that existing anti-discrimination laws and regulations are followed in legal practise. Discrimination is illegal in several nations, although the rules are not strictly enforced.

Judges, prosecutors, and lawyers play a critical role in resolving these issues and ensuring that discriminatory acts are not allowed, that they are thoroughly investigated and punished, and that victims have appropriate remedies. In cases when domestic discrimination law is absent or unclear, legal professionals may seek advice from international legal instruments.

Domestic judges, prosecutors, and lawyers have a professional obligation to transform existing domestic legal provisions on the right to equality and non-discrimination into truly effective legal concepts, and they must apply, or at the very least be guided by, international legal rules on these issues whenever they are competent to do so. If this is done regularly and efficiently, there is a genuine chance of making the world a friendlier place for everyone.

CONCLUSION

Discrimination strikes to the core of what it is to be human. Someone's rights are being violated just because of who they are or what they believe. Discrimination is destructive and contributes to the perpetuation of inequality. Discrimination is defined as any action that makes a person feel disregarded or marginalised. Making comments about someone's sexuality, age, gender, caste, or anything else makes them feel smaller and ashamed. Indirect discrimination is not done on purpose, but the consequences of certain regulations damage some individuals or groups of individuals. It is necessary to develop policies that do not discriminate against individuals and do not harm their feelings. There is a need for a law that will cover all types of discrimination and will assist those who are discriminated against.

To attain equality, it may be necessary to treat people differently at times. This is because people's differences can make it harder for them to exercise their rights without assistance. If the criteria for distinction are fair and objective, and the goal is to achieve a legitimate goal under the International Covenant on Civil and Political Rights, differing treatment may not amount to illegal discrimination. The need to refrain from discriminating or eroding equality, as well as the obligation to maintain and enhance the fulfilment and enjoyment of the rights to equality and non-discrimination for all individuals, are both included in the right to equality and non-discrimination.