

THE NEED FOR AN ANTI-DISCRIMINATION LAW

India is unique among democracies in that a constitutional right to equality is not backed by comprehensive legislation

Sport is often a microcosm of society. Much as we might sometimes see it as a leveller, it invariably tends to underscore more endemic inequities. Recent revelations made by the former West Indies cricket captain Darren Sammy, therefore, must awaken us to a problem that goes far beyond the cricket field and its narrow confines, of a society replete with racism.

Voices in sport:

In our country, this problem is only exacerbated by other historically ingrained forms of discrimination, along the lines of caste, class, gender, and religion among other things. Indeed, in reacting to Mr. Sammy's statements, the former Indian cricketer Irfan Pathan pointed not only to how players from the south of India routinely faced abuse from crowds in the north — something which the Tamil Nadu and India opener Abhinav Mukund too attested to — but also to another form of prejudice even more entrenched in society. On June 9, Mr. Pathan said, in a tweet, that racism in our country goes beyond the colour of our skins, that enforcing embargoes on people seeking to buy houses based on their faith ought to equally be seen as a feature of prejudice.

Predictably, Mr. Pathan faced a volley of abuses for his tweet. A number of people told him that India had given him everything — love, fame and money — and that he should check with Pakistan on how they were doing. But, if anything, these responses only reinforced his argument. Here was a cricketer, who had represented India on the world stage with some distinction, being asked to prove his loyalty all over again, simply on account of his faith. So vitriolic were some of the responses that Mr. Pathan was eventually forced into clarifying that his opinions “are always as an Indian and for India”. He did not need to do this, not least because his judgment had captured the kernel of the debate: that more than 70 years after Independence, our society remains rife with structural discrimination.

Blow against race-neutrality:

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 latter, however, is just as pernicious. 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 — by insisting on a superfluous written test by applicants for its better entry-level jobs. 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”.

State and private contracts:

Both direct and indirect forms of discrimination militate against India's constitutional vision of equality. The verdict in *Griggs* was notably applied by Justice S. Ravindra Bhat in the Delhi High Court's 2018 judgment in *Madhu vs. Northern Railway*. There, the Railways had denied free medical treatment to the wife and daughter of an employee which they would otherwise 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. The Constitution, though, 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. 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, in Zoroastrian Cooperative Housing Society vs District Registrar Co-operative Societies (Urban) and Others, endorsed one such restrictive bond, when it ruled in favour of a bye-law of a Parsi housing society that prohibited the sale of 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).

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.

An overruling of the verdict in Zoroastrian Cooperative, while desirable, is unlikely, however, to serve as a panacea. India is unique among democracies in that a constitutional right to equality is not supported by comprehensive legislation. In South Africa, for example, a constitutional guarantee is augmented by an all-encompassing law which prohibits unfair discrimination not only by the government but also by private organisations and individuals.

Attempts at change:

In India, there have been a few efforts to this end in recent times. Shashi Tharoor introduced a private member’s bill (drafted by Tarunabh Khaitan) in 2017, while the Centre for Law & Policy Research drafted and released an Equality Bill last year. These attempts recognise that our civil liberties are just as capable of being threatened by acts of private individuals as they are by the state.

Ultimately, our rule of law must subsume an understanding that discrimination partakes different forms. Any reasonable conception of justice would demand that we look beyond the intentions of our actions, and at the engrained structures of society. This does not mean that we need to live under an illusion that a statute will resolve our systemic biases, that we will somehow magically transform ourselves into the kind of nation that B.R. Ambedkar envisioned. But, now more than ever, as we look to reset our societal arrangements in the wake of COVID-19, a rededication to our original constitutional commitment could be worthwhile. To that end, the idea of enacting a law that will help ameliorate our ways of life, that will help reverse our deep-rooted culture of discrimination, is worth thinking about.

Meanings of Difficult Words :

- ❖ **anti-discrimination law** (noun) – legislation designed to prevent discrimination against particular groups of people.
- ❖ **discrimination** (noun) – prejudice, intolerance, inequity, unfairness (against an individual or group of individuals by society and its institutions (basically in the procedures, policies or objectives) as a whole.
- ❖ **back** (verb) – support, endorse, approve, advocate.

- ❖ **comprehensive** (adjective) – all-inclusive, all-encompassing, complete, thorough & detailed.
- ❖ **legislation** (noun) – statute, act, bill, law.
- ❖ **microcosm** (noun) – a small world.
- ❖ **leveller** (noun) – a situation in which all people (irrespective of colour, class, caste or creed) seem equal since it affects all of them the same way.
- ❖ **invariably** (adverb) – always, every time/each time; habitually/inevitably.
- ❖ **underscore** (verb) – underline, emphasize, highlight.
- ❖ **endemic** (noun) – widespread, prevailing, universal, pervasive, ubiquitous.
- ❖ **inequity** (noun) – bias, prejudice, discrimination, partiality, unfairness.
- ❖ **revelation** (noun) – telling, disclosure, announcement, declaration, expression.
- ❖ **awaken (someone to)** (verb) – make someone aware of something, make someone to notice something (particularly for the first time).
- ❖ **go beyond** (phrasal verb) – transcend, rise above, cut across.
- ❖ **narrow** (adjective) – limited, restricted, small.
- ❖ **confines** (noun) – limits, borders, boundaries.
- ❖ **replete with** (adjective) – filled with, well supplied/stocked with, overloaded.
- ❖ **racism** (noun) – the belief that a particular race is superior or inferior to another.
- ❖ **voices** (noun) – opinion, view, attitude.
- ❖ **exacerbate** (verb) – aggravate, worsen, compound, intensify, heighten.
- ❖ **ingrained** (adjective) – entrenched, established, deep-rooted, firmly fixed.
- ❖ **indeed** (adverb) – in fact, actually, undeniably.
- ❖ **point to** (verb) – indicate, suggest, denote.
- ❖ **attest** (verb) – evidence, certify, back up, endorse, support.
- ❖ **embargo** (noun) – ban/bar, restriction, prohibition, stoppage (official one).
- ❖ **seek** (verb) – try, aim, attempt.
- ❖ **ought to** (modal verb) – must, should.
- ❖ **predictably** (adverb) – as expected, as anticipated.
- ❖ **volley** (noun) – series, string, chain.
- ❖ **reinforce** (verb) – strengthen, fortify, bolster up.
- ❖ **distinction** (noun) – honour, credit, excellence, merit.
- ❖ **loyalty** (noun) – allegiance, faithfulness; reliability, trustworthiness; dedication/commitment.
- ❖ **on account of** (phrase) – because of, owing to/due to, by virtue of.
- ❖ **vitriolic** (adjective) – bitter, nasty, harsh, stinging, venomous/poisonous.
- ❖ **not least** (phrase) – in particular; notably.
- ❖ **kernel** (noun) – essential part, fundamental part, basic part of something, crux, nucleus.
- ❖ **blow** (noun) – shock, surprise, rude awakening; misfortune, setback, disappointment.
- ❖ **race-neutrality** (noun) – an act of not giving a special advantage to people of any race.
- ❖ **pervade** (verb) – pass through fill, spread through; be present.
- ❖ **manifest** (verb) – indicate, show, display, exhibit.
- ❖ **unintended** (adjective) – unplanned, unexpected, accidental.
- ❖ **pernicious** (adjective) – harmful, damaging, destructive.
- ❖ **perhaps** (adverb) – maybe, possibly.
- ❖ **fall/run foul of** (phrase) – get into trouble, come into conflict with, go against (by not following rules/standards).
- ❖ **insist on** (verb) – demand forcefully, ask for, press/push for.
- ❖ **superfluous** (adjective) – extra, surplus, excess; unnecessary/inessential.
- ❖ **on the face of it** (phrase) – apparently, seemingly, evidently/ostensibly.
- ❖ **victimise** (verb) – punish unfairly, harass, torment.
- ❖ **invoke** (verb) – cite, refer to; resort to, have recourse to.
- ❖ **Aesop fable** (noun) – a collection of fables (stories) from the Greek slave & story teller, Aesop. (He believed to have lived in ancient Greece between 620 and 564 BCE).
- ❖ **criterion** (noun) – basis, standard, norm. (criteria is the plural form of criterion).
- ❖ **fabled** (adjective) – famous, well known, celebrated; mythological, fairy-tale, imaginary.
- ❖ **the stork and the fox** (phrase) – it is one of Aesop's fables. (when the milk/soup served in a very shallow dish (plate), it would become difficult for the stork (a large white bird with a long beak/bill and long legs) to get anything from the plate with its long heavy bill, but the fox lapped it up easily. If the milk/soup served in a narrow-necked vessel, it is easy for the stork to access but impossible for the fox). (lap up means take up (a drink) with tongue).
- ❖ **resort to** (verb) – use, utilize, turn to, have recourse to.
- ❖ **proffer** (verb) – offer, tender, give.

- ❖ **seeker** (noun) – a person who is trying to get/obtain something.
- ❖ **overt** (adjective) – clear, visible, noticeable/unconcealed.
- ❖ **discriminatory** (adjective) – biased, unfair, unjust, inequitable.
- ❖ **militate** (verb) – work against, resist, hinder/oppose.
- ❖ **entitle** (verb) – authorize, empower, allow, permit.
- ❖ **contend** (verb) – assert, claim, argue, insist, state.
- ❖ **disown** (verb) – reject, deny, abandon, renounce.
- ❖ **strike off** (phrasal verb) – remove, delete.
- ❖ **hold** (verb) – give (a verdict/judgement).
- ❖ **subject to** (verb) – conditional on, contingent on, dependent on.
- ❖ **facially** (adverb) – on its face; in a facial manner.
- ❖ **disparate** (adjective) – contrasting, different, dissimilar.
- ❖ **realm** (noun) – area, field, domain (of activity).
- ❖ **markedly** (adverb) – significantly, noticeably, clearly.
- ❖ **vocal** (adjective) – vociferous, outspoken, forthright; relating to someone who expresses his/her views freely.
- ❖ **stipulate** (verb) – lay down, specify, state clearly.
- ❖ **ground** (noun) – reason, factor, basis.
- ❖ **on occasion** (phrase) – sometimes, from time to time, at times.
- ❖ **horizontally** (adverb) – equally (across all departments).
- ❖ **inter se** (adverb) – (Latin phrase) between themselves; among themselves.
- ❖ **discriminate** (verb) – disfavour, be biased, treat differently; differentiate, distinguish, separate.
- ❖ **conscience** (noun) – moral sense, inner voice; values/principles.
- ❖ **bye-law/by-law** (noun) – regulation, statute, enactment, act (by a local authority).
- ❖ **forbid** (verb) – prohibit, ban, bar, stop.
- ❖ **intrinsic** (adjective) – built-in, deep-rooted, inherent.
- ❖ **point out** (phrasal verb) – refer to, mention, identify, draw attention to.
- ❖ **conflate** (verb) – combine, abridge/summarize, shorten (too many information into one).
- ❖ **contract** (verb) – decrease, decline, reduce.
- ❖ **overlook** (verb) – miss, fail to notice; disregard, neglect/ignore.
- ❖ **at first blush** (phrase) – at the first glimpse (glance, brief look, sight).
- ❖ **read** (verb) – interpret, understand, analyse.
- ❖ **widely** (adverb) – extensively, exhaustively, thoroughly, broadly.
- ❖ **explicitly** (adverb) – clearly, unequivocally, directly.
- ❖ **run counter to** (phrase) – to be opposed to, to be in conflict with.
- ❖ **overrule** (verb) – cancel, reverse, rescind, repeal.
- ❖ **unlikely** (adjective) – not likely, improbable, questionable.
- ❖ **panacea** (noun) – perfect solution, universal cure, cure for all, sovereign remedy.
- ❖ **augment** (verb) – increase/raise, make larger, build up, enlarge.
- ❖ **subsume** (verb) – include, incorporate, absorb, encompass.
- ❖ **partake** (verb) – participate, take part/join, engage.
- ❖ **look beyond** (verb) – anticipate, look forward, try to think (a time in the future); plan further than something.
- ❖ **illusion** (noun) – (false) impression, (false) appearance, misconception.
- ❖ **statute** (noun) – act/law, regulation, rule (written & laid down by the legislature).
- ❖ **systemic** (adjective) – constructional, organizational, formational.
- ❖ **envision** (verb) – imagine, visualize, intend, envisage.
- ❖ **reset** (verb) – re-establish.
- ❖ **societal** (adjective) – relating to society; collective, social, collaborative.
- ❖ **in the wake of** (phrase) – as a result of, in the aftermath of, as a consequence of.
- ❖ **rededication** (noun) – re-commitment, re-dedication; an act of dedicating/committing again.
- ❖ **worthwhile** (adjective) – valuable, helpful, useful.
- ❖ **to that/this end** (phrase) – for that reason.
- ❖ **ameliorate** (verb) – make better, enhance, improve (a bad or unpleasant situation).