

# An Anti-Discrimination Law for India: An Analysis of the Equality Bill, 2021

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## Abstract

Despite the fact that constitutional protection to right to equality and non-discrimination is provided under Article 14, 15 and 16 of the Indian constitution, there is a lack of a comprehensive Anti-discrimination Law. This means, India is unique among democracies in the sense that a constitutional right to equality is not backed by a comprehensive legislation. Anti-discrimination legislations do exist in India, however, they are riddled with flaws. The Anti-Discrimination Legislations in India are non-uniform, fragmented and inadequate. Though attempts have been made to draft a comprehensive anti-discrimination code, most recently by the Centre for Legal and Policy Research in the form the Equality (Prohibition of Discrimination) Bill 2021, it has not been enacted. The Bill recognises 26 protected characteristics including sexual orientation and gender identity and prohibits direct as well as indirect discrimination, intersectional discrimination, structural discrimination, hate speech, harassment, boycott and lynching. The Bill if enacted would be the First Single Equality Act to be enacted in India, and would bridge the gap in the present legislative framework.

This Legislative review is thus aimed at analysing the Equality Bill, 2021, in order to understand how it can serve as a model Bill for India.

## INTRODUCTION

Tona Chettri Chauhan, a transgender woman was hired at a corporate call centre, however, she quit four days after joining. Calling the experience 'torture' she said that there were 400 people working there, and only a quarter of them were comfortable with her transgender status, the rest kept staring, and laughing. So even though she desperately needed the money, she could not stay on the job.<sup>1</sup> In another instance, a 17-year-old Dalit boy was shot dead, only because he dared to enter a temple.<sup>2</sup> Reema Paul, was fired from her corporate

1 Micheal Safi, "'I'm transgender': India grapples with prejudices left over from British rule," *The Guardian*, available at: <https://www.theguardian.com/world/002017/000apr/22/im-transgender-india-grapples000-with-prejudices-left-over-british-0000rule-anti-discrimination-bill> (last visited on July 30, 2021).

2 Ritu Singh "Dalit Lives Matter, Really? 17-Year-Old Dalit Boy Shot by Upper Caste Men For Visiting Temple in UP's Amroha", *india.com*, available at: <https://www.india.com/viral/dalit-lives-matter-really-17-year-old-dalit-boy000-shot-by-upper-caste-men00>

job when she applied for a leave in the final trimester of her pregnancy.<sup>3</sup> The Khap Panchayat in Barmer, ordered social boycott of the family of a 15 year old girl, who returned home after her forced marriage with an older man fell apart.<sup>4</sup> A teenage girl from Chennai, wrote about her first crush on social media, like most teenagers do. The only difference being, her first crush was another girl from her class. The post went viral, and eventually reached the school principal, who reportedly told the girls “to go kill themselves,” which is exactly what one of them did.<sup>5</sup> Instances of such discrimination, whether it is based on caste, gender, marital status, sexual orientation, gender identity, or any other characteristic, are extremely common occurrence and tend to have a devastating impact on the victims as well as the society as a whole.

Though there are anti-discrimination legislations in India, they are non-uniform and fragmented and, thus, have proved to be highly inadequate in addressing the issue of discrimination. The past couple of decades have witnessed efforts being made towards the introduction of an Anti-discrimination Code in India. The need for an Anti-discrimination law to fill the gaps within the present framework was first recognised in 2006 by the Sachar Committee Report. The committee had recommended the constitution of a equal opportunity commission to look into the grievances of minorities.<sup>6</sup> The idea was reaffirmed by the equal opportunity commission report through The Equal Opportunity Commission

Bill, 2008.<sup>7</sup> The Bill extended protection on the basis of grounds that went beyond those covered by Art 15, but did not include a number of grounds, for instance, sexual orientation and gender identity. It addressed discrimination on the basis of sex, caste, language, religion, disability, descent, place of birth, residence and race.<sup>8</sup> Even though it defined direct and indirect discrimination, it did not itself prohibit discrimination. Instead, the enforcement of the anti-discrimination provisions was grounded in Article 15 and Article 16, which caused ambiguities w.r.t the protected grounds.<sup>9</sup> Other than this, Equal Opportunities and Diversity (Affirmative Action for Scheduled Castes and Scheduled Tribes) Bill, 2003 and Promotion of Equal Opportunity and Prohibition of Discrimination Against the Scheduled Castes and Scheduled Tribes in Matters of Employment (In Services, Trade, Business, Commerce, Contract, Construction, Transport or Other Utility Services in Private Sector) Bill, 2004 were drafted to prohibit discrimination based on caste in the private sector. In 2016, the first single equality law titled Equality and Anti-Discrimination Bill, 2016 was drafted and introduced by Shashi Tharoor as a private members bill.<sup>10</sup> The Bill, however, lapsed in 2019, due to apprehensions among the treasury benches.<sup>11</sup> Inspired by this, and The UK Equality Act, 2010, The Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 of South Africa, the Victorian Equal Opportunity Act, 2010, and the United States Equality Act, 2019, the Centre for legal and Policy research has drafted The Equality (Prohibition of Discrimination) Bill, 2021.

Even the Law Commission of India in its 267th report remarked that “There is a need to revise and strengthen the existing anti-discrimination

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for-visiting00-temple-in-ups-amroha-4052928/ (last visited on July 30, 2021)

3 Sharmishtha Choudhary, “Penalised for pregnancy”, *The Hindu*, July 3, 2013.  
4 Mukesh Mathrani, “Khap victim family faces social boycott, no action in police case”, *The Hindustan Times*, Feb. 18, 2016.  
5 Satarupa Sen Bhattacharya “Labelled, bullied, humiliated: What LGBT students in our schools go through”, *Citizen Matters*, available at: <https://citizenmatters.in/india-city-schools-homophobia-lgbt-discrimination-gender-research-6863> (Last visited on Dec 21, 2020).  
6 Government of India, “Report on the Social, Economic and Educational Status of the Muslim Community of India (Sachar Committee Report)”, 240 (Ministry of Minority Affairs, 2006).

7 Government of India, “Report on Equal Opportunity Commission: What, Why, How?” (Ministry of Minority Affairs, 2008).

8 Equal Opportunity Commission Bill, 2008, s. 2 (k)(i).  
9 Pushan Dwivedi, “Equal Opportunity Commission Bill: An Analysis,” 6 *Indian Journal of Constitutional Law* 177 (2013).  
10 Anti-discrimination and Equality Bill, 2016 (Bill No. 289 of 2016).  
11 Shashi Tharoor & Arvind Kurian Abraham, “A Kerala model for an anti-discrimination law”, *The Hindu*, July 12, 2021.

legislation so as to meet universal standards on equality across all groups, communities, men and women.”<sup>12</sup> Thus, the need for a single anti-discrimination law has, thus, been asserted time and again in India. The Equality Bill, 2021, is only the latest attempt at drafting such a legislation. The reason why this is an appropriate time to discuss this issue is that over the past year a number of concepts which had previously not received adequate attention are being brought to light by the Supreme Court itself, for instance, indirect discrimination<sup>13</sup> and Intersectionality.<sup>14</sup> Secondly, Mr. Shashi Tharoor has recently proposed a model anti-discrimination law for Kerala.<sup>15</sup> Because of the momentum that the issue has gained in recent times, and analysis of the Equality (Prohibition of Discrimination) Bill, 2021, is imperative for it is the most recent and comprehensive legislation, so far. However, prior to that it is essential to take a look at the present framework of discrimination laws in India. Thus, Part I of this legislative review briefly discusses the present legislative framework whereas Part II consists of a detailed analysis of the Equality Bill, 2021.

## A GLIMPSE OF THE PRESENT LEGISLATIVE FRAMEWORK OF DISCRIMINATION LAWS IN INDIA

In India, though there is no single equality act, there are a number of separate acts that have been passed in order to promote equality. This section is aimed at studying this framework in order to understand the gaps within it. One of the earliest statutes enacted to deal with ground-based discrimination was the Caste disability removal act, 1850 enacted in India. However, despite this early start the contemporary statutes in India are still focused on dealing with caste based inequalities, while ignoring other grounds of discrimination.<sup>16</sup>

12 Law Commission of India, “267th Report on Hate Speech,” 50 (March, 2017)

13 *Lt. Col. Nitisha v. Union of India*, 2021 SCC OnLine SC 261.

14 *Patan Jamal Vali v. State of Andhra Pradesh*, 2021 SCC OnLine SC 343.

15 *Supra* note 11.

16 Tarunabh Khaitan, *A Theory of Discrimination law* 46

The Protection of Civil Rights Act, 1955 (“the 1955 Act”) had been introduced to prevent the practice of untouchability.<sup>17</sup> Though it extended protection to access to shops, hotels, public restaurant, places of public entertainment, restaurants, hospitals, places of worship, etc., it largely prescribed only penal remedies.<sup>18</sup> The Act punishes ‘enforcement of any disability on grounds of untouchability’;<sup>19</sup> however, it is vague on the question of protected identities. Sec. 3 of the The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (1989 Act), prevents thirty-three distinct forms of violence/discrimination against the members of Schedule Caste and Schedule Tribes.<sup>20</sup> The Act also recognises two gender specific offences: sexual exploitation and outraging the modesty of women belonging to SCs and STs.<sup>21</sup> However, once again, this act only recognises caste as a protected ground and provides for penal punishments. The Equal Remuneration Act, 1976 also recognises one single protected ground. It only applies in cases of wage inequalities between men and women on grounds of gender based discrimination.<sup>22</sup> The act is further limited to the employment sphere only. The right to education act, 2009 defines “child” in binary terms i.e male and female, thus, excluding transgender children.<sup>23</sup> Similarly, The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”) only extends protection to an “aggrieved women”.<sup>24</sup> However, because under Sec 2(m) of this act, the respondent can be of either gender, according to the SC, the POSH act protects women against sexual harassment by other women and hence, it addresses sexual harassment by

(The Oxford university press, Oxford, 2017).

17 The Protection of Civil Rights Act, 1955 (Act 22 of 1955), preamble.

18 *Id.* at s. 4, 5 & 6.

19 *Id.* at s. 4.

20 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (Act 33 of 1989), s. 3

21 *Id.* at s. 3(1)(xi)&(xii).

22 The Equal Remuneration Act, 1976 (Act 49 of 1987), s. 2 (d).

23 The Right of children to free and compulsory education, 2009 (Act 35 of 2009), s. 2(c).

24 The Sexual Harassment of women at Workplace (Prevention, prohibition and redressal)Act, 2013 (Act 14 of 2013), s. 2(a).

individual who recognise themselves as lesbians.<sup>25</sup> But Transgender persons and gay men would still be left out of the scope of its protection. Recently, the Calcutta High Court has, in order to rectify this situation, extended the protection under POSH Act to cases involving same-gender complaints,<sup>26</sup> but the provisions still remain ambiguous as far as gender and sexual minorities are concerned. The Transgender (Protection of Rights) Act, 2019, which is the first discrimination legislation that provides protection against Discrimination based on Gender Identity, is also riddled with flaws, such as inadequate penalties prescribed for offences against Transgender persons,<sup>27</sup> lack of an enforcement mechanism,<sup>28</sup> and mandatory requirement for legal gender recognition.<sup>29</sup> The Persons with Disability Act, 2016, provides for protection against discrimination based on disability, and welfare measures for the upliftment of disabled people in areas of education, health, employment and transport.<sup>30</sup> It is the only legislation in India which recognises the concept of 'reasonable accommodation', however, the duty to ensure reasonable accommodation is placed on the Government only.<sup>31</sup>

Thus, from the above discussion, it can be concluded that each of these separate acts have their shortcomings. These acts are fragmented and inadequate, in the sense that, they only protect specific identities, do not take into account intersectionality, largely only apply to the public sector, and provide mostly penal remedies which

are non-uniform in nature.<sup>32</sup> Despite the fact that constitutional protection to right to equality and non-discrimination is provided under Article 14, 15 and 16 of the Indian constitution, there is a lack of a comprehensive Anti-discrimination Law, making India unique among democracies across the world, in the sense, that a constitutional right to equality is not backed by a comprehensive legislation.<sup>33</sup> The Equality Bill, 2021 drafted by CLPR is an overarching legislation that provides protection on 27 different grounds, and can be used a model Anti-discrimination legislation for our country. Thus, the next section aims to discuss in detail what this bill entails.

## AN ANALYSIS OF THE EQUALITY (PROHIBITION OF DISCRIMINATION) BILL, 2021

On January 8, 2021, the latest draft of the Equality Bill was published by CLPR. This Section is aimed at discussing the salient features of this Bill. The discussion has been divided into four parts to cover all essential aspects of the Bill.

**Who is protected under the Bill?** The bill under Sec. 2(42) lays down a very comprehensive list of protected characteristics which includes caste, race, ethnicity, descent, colour, sex, sexual orientation, gender identity, gender expression, tribe, nationality, disability, marital status, pregnancy, family responsibilities, health (including HIV / AIDS status), occupation, political opinion and belief, linguistic identity, place of birth, age, migration, religion, refugee status, socio-economic disadvantage, food preference or any combination of these characteristics.<sup>34</sup> This list is thus, in consonance with the recent judgments in *Navtej Singh Johar v. Union Of India*<sup>35</sup> and *NALSA v. Union of India*,<sup>36</sup> which

32 Md. Mahababur Rehman, "In Quest of an Anti-Discrimination Law for Bangladesh: State's Obligation and National Expectations", 1(7) *International Journal of Multidisciplinary Sciences and Advanced Technology* 16 (2020).

33 Suhrit Parthasarathy, "The need for an anti-discrimination law", *The Hindu*, June 15, 2020.

34 The Equality Bill, 2020, s. 2(42).

35 AIR 2018 SC 4321.

36 (2014) 1 SCC 1.

25 *Hiral P. Harsora v. Kusum Narottamdas Harsora*, (2016) 10 SCC 165.

26 *Dr. Malabika Bhattacharjee v. Internal Complaints Committee, Vivekananda College and others.* (2020)

27 The transgender (protection of rights) Act, 2019 (Act. 40 of 2019), s. 18. The maximum punishment for violence and sexual abuse against Transgender persons is 2 years under this act. In contrast, the punishment for Rape of a woman in IPC is 7 years.

28 Rachana Mudraboyina, A critique of Transgender Persons (Protection of Rights) Bill, 2019, available at: [https:// hrln.org/uploads/2019/07/critique-of-transgender-persons-bill-2019.pdf](https://hrln.org/uploads/2019/07/critique-of-transgender-persons-bill-2019.pdf) (last visited on Aug. 2, 2021)

29 *Supra* note 27 at s. 6 & 7.

30 The Persons with Disability Act, 2016 (Act 49 of 2016), s. 16, 19, 20, 25, 41.

31 *Id.* at s. 3(5).

recognise the right against discrimination of Sexual and gender minorities.

**What is Prohibited by the Bill?** The bill prohibits discrimination, boycott, harassment, victimisation, hate speech, and lynching.<sup>37</sup> Under Sec.3, Discrimination in the act encompasses direct as well as indirect discrimination, intersectional discrimination and structural discrimination. The recognition of each of these types of discrimination is particularly once again in consonance with the SC's jurisprudence on equality, thus, each of these needs to be discussed in detail.

■ **Recognition of Intersectionality:** The present legislations in India, attribute discrimination to a single ground such as sex, caste, religion, etc. However, such an interpretation is incompatible with the jurisprudence (although limited) that has been evolved by the SC on this issue. The SC had in *Navtej Singh Johar*, recognised the concept of intersectionality by holding that “formalistic interpretation” of Art 15 renders meaningless, the constitutional guarantee of non-discrimination because it doesn't allow for intersectional discrimination to be taken into account. It was observed that: “*the intersectional nature of sex discrimination, cannot be said to operate in isolation from other identities.*”<sup>38</sup> More recently, in *Patan Jamal Vali v. State of Andhra Pradesh*, it has been held that in case of rape of disabled women belonging to schedule castes, the sexual assault is not a result of any isolated characteristics, rather “is a result of the interlocking of different relationships of power at play.”<sup>39</sup> According to a 2019 report of Amnesty International, between 2015 and 2019, 274 hate crimes have been committed against women with added vulnerabilities. Of these, 210 were against Dalit women, 16 were against muslim women and 29 against women from sexual minorities.<sup>40</sup> Thus, vulnerability is compounded where more than one marginal identities overlap.

37 *Supra* note 34 at s. 3-9.

38 *Supra* note 34 at para 36 (Dr. D.Y. Chandrachud, J.'s Opinion).

39 *Patan Jamal Vali v. State of Andhra Pradesh*, 2021 SCC OnLine SC 343, para 12.

40 Amnesty International, “Halt the Hate: Key Findings” 10 (2019)

■ **Recognition of Indirect Discrimination:** Indirect Discrimination refers to a situation where a seemingly ‘neutral’ policy, practice or rule, has a disproportionate negative effect on a particular group. The Doctrine of Indirect Discrimination aims to achieve substantive equality rather than just Formal equality. The Substantive approach to equality takes into account social realities of a disadvantages group and aims at compensating for social inequalities which may limit an individual's prospects. Indirect discrimination, in this sense, takes into account the additional burdens that a disadvantaged group faces in its pursuit of equality. This resonates with the argument made by Sandra Fredman, that the idea behind indirect discrimination is that mere recognition of ‘*equal treatment may itself be discriminatory.*’<sup>41</sup> In India, the Doctrine of Indirect discrimination has been in discussion in both the SC<sup>42</sup> and HCs.<sup>43</sup> While the courts in India have been occasionally referring to the concept of Indirect discrimination for the past decade or so, it was for the first time in *Madhu v. Northern Railway*, that Delhi High Court specifically applied this concept. The case involved interpretation of a railway policy guaranteeing medical benefits to the spouse of the employee. It was held that if the employee was allowed to unilaterally decide to deprive his spouse of these medical benefits, it would disproportionately affect women, for even today, the workforce is predominantly male, and it is women who are dependent on their spouses.<sup>44</sup> Recently, in *Lt. Col Nitisha*, the SC laid down the framework for indirect discrimination in India. The SC has adopted the two-step test laid down by the Canadian

41 Sandra Fredman, *Discrimination Law*, 189 (Oxford University Press, Oxford, 2011).

42 See *Indian Young Lawyers Association v. State of Kerala*, 2018 SCC Online SC 1690; *Joseph Shine v. Union of India*, 2018, SC OnLine SC 1676.

43 See *Patel Suleman Gaibi v. State of Maharashtra*, 2014 SCC OnLine Bom 4639; *Inspector (Mahila) Ravina v. Union of India*, Writ Petition (C) 4525 of 2014, *Delhi High Court*; *Madhu v. Northern Railways*, 2018 SCC OnLine Del 6660;

44 *Madhu v. Northern Railways*, 2018 SCC OnLine Del 6660, para 29.

Courts in **Fraser v. Canada**. In the first step it is to be assessed whether the law in question has a disproportionate impact on the members of a disadvantaged group. In the second step, the court is required to assess “whether the law has the effect of reinforcing, perpetuating, or exacerbating disadvantage.”<sup>45</sup> Even though a somewhat comprehensive framework for Indirect discrimination has been laid down by the SC, the realisation of the true potential of this doctrine depends on the manner in which it is practiced.<sup>46</sup> The manner in which it is further interpreted by courts and whether or not it is incorporated in statutes, is important. Therefore, the recognition of Indirect Discrimination by this Bill is clearly an important step.

- **Recognition of Structural Discrimination:** Structural or Systemic Discrimination has also been discussed by the SC in *Lt. Col. Nitisha*. The SC has interpreted systemic discrimination as a phenomenon where societal patterns of discrimination are compounded by social and economic structures.<sup>47</sup> Its prohibition is important to help address the discriminatory practices, that are a result of the historical prejudice and stigma against the marginalised communities, that have overtime become institutionalised.

To ensure adequate redressal of discrimination, the bill has two more salutary provisions: It provides (1) That in case a discriminatory act is alleged the burden of proof is on the respondent to establish that the act did not take place or that it wasn't based on one or more protected characteristics (2) In case of discrimination the motivation of the person, Knowledge of the respondent that the act is discriminatory and even the consent of the complainant/complaints is irrelevant.<sup>48</sup>

- **Recognition of Hate Speech as an Equality Issue:** The Bill under section 5 prohibits Hate Speech treating it as an issue of equal concern and respect for all members of the society,

45 *Supra* note 13 at para 65.

46 Christa Tobler, “Limits and Potential of the Concept of Indirect Discrimination” 68 (European Commission, 2008).

47 *Supra* note 13 at para 97.

48 *Supra* note 34 at s. 4(2) & (3).

rather than a mere issue of sentiments. Such understanding is in consonance with the SC's pronouncement in *Pravasi Bhalai Sangathan v. Union of India*, wherein it was observed that Hate Speech does not merely cause distress to an individual, it also has a societal impact. It has the effect of laying the groundwork for later, attacks on marginal groups, which may range from “discrimination, to ostracism, segregation, deportation, violence and even genocide.”<sup>49</sup> Thus, if implemented the Bill would be the first legislation to follow up on these observations.

- **Prohibition of Social Boycott:** In 2016, the Maharashtra Protection of People from Social Boycott (Prevention, Prohibition and Redressal) Act, 2016 became the first legislation in India to prohibit social boycotts. However, the act is a state legislation and prohibits social boycotts only on grounds of caste.<sup>50</sup> The prohibition of Social Boycotts under Sec. 7 applies to all protected characteristics recognised by the bill.

**What areas does the bill cover?** The bill is applicable to spheres of employment, education, goods and services, public buildings and public places, healthcare, and housing and land.<sup>51</sup> Such widespread coverage of the private sector by the Bill, specifically the housing guarantees, would mean that the Bill contradicts the judgment in *Zoroastrian Co-Operative Housing Society v. District Registrar Co-operative Societies*,<sup>52</sup> which held that cooperative societies had the right to enforce restrictive covenants. The Judgment had upheld a bye-law of a Parsi Housing Society which prevented the sale of property to non-parsi individuals.<sup>53</sup> The question thus arises that whether the Bill if implemented would legislatively overrule the *Zoroastrian Judgment*.

The Scope of the Bill is exceptionally wide for it covers all discriminatory acts in all spheres except personal relationships. The exceptionally wide

49 *Pravasi Bhalai Sangathan v Union of India*, AIR 2014 SC 1591, para 7.

50 Maharashtra Protection of People from Social Boycott (Prevention, Prohibition and Redressal) Act, 2016 (Act 44 of 2017), s. 5&8.

51 *Supra* note 34 at s. 10, 13, 14, 15.

52 (2005) 5 SCC 632.

53 *Id.* at para 33 & 34.

definitions of 'Employee' and 'Employer' cast a very wide net of protection. The definition of "employer" under Sec. 2 (17) of the bill is inclusive enough that even even includes the person/household employing a domestic worker. The definition of 'Employee' uses the phrase '*any person (including an apprentice) employed on earnings at any workplace*'<sup>54</sup> would mean that even informal labourers and agricultural labourers belonging to protected groups will be able to bring their claims under the Bill.

**How will the protection given under the bill be realised?** For this purpose the bill has made provisions for an Equality Commission and Equality Courts. While an Equality Commission has the nature and role of an advisory body,<sup>55</sup> Equality Courts are where the enforcement will take place.<sup>56</sup> The Bill provides for designation of certain District Courts as Equality Courts.<sup>57</sup> Because the constitutional courts are expensive and difficult to approach for the enforcement of right of equality and right against non-discrimination, the equality courts are a noble step towards bringing constitutional adjudication closer to the people. However, to be designated as equality courts, Judges will need to not just be trained but also sensitised towards the issues of the marginal communities.<sup>58</sup> For instance, A Bangalore Judge, while dealing with a case involving a transgender person reportedly said that, "These (transgender) people are a nuisance".<sup>59</sup> Thus, without proper sensitisation and training, it is questionable how effective this bill can be.

On the aspect of remedies available, the Bill is focussed on compensation and redressal of the victim's troubles rather than punishing the accused. The remedies provided under the bill include payment of damages, declaratory reliefs, settlement

between parties, Injunctions, affirmative action and restraining order on discriminatory practices.<sup>60</sup> Some of the punitive measures covered are revocation or suspension of licence of the defendant.<sup>61</sup>

Another, important aspect with respect to enforcement is that, this bill will not repeal all other Anti-discrimination Legislations, but will rather supplement them. Thus, if this bill is implemented there will be two frameworks available for the victims, both working simultaneously.

## Some Apprehensions

According to Jerome Frank, Judgments are often based on a Judicial hunch rather than a systematic factual understanding applied to the law. In India, there have been a number of instances when judges have forwarded their personal notions even in constitutional courts. For instance, in *Dr. Ramesh Yeshwant Prabhoo vs Shri Prabhakar Kashinath Kunte*, the SC while expounding the philosophy of Hindutva allowed political speeches and pamphlets demanding votes on religious grounds.<sup>62</sup> Thus, proper implementation of Sec. 24(4) of the Equality act, which provides for mandatory training for judges presiding over equality courts is of great significance.<sup>63</sup>

Apart from training of judges, public awareness is also important. This is because there have been instances when positive and well-intentioned policies have failed due to public insensitivity. Recently, the kochi metro has hired Transgender Persons to provide customer care services, But customers actively avoided booths operated by them.<sup>64</sup>

## CONCLUSION

There is widespread discrimination faced by people

54 *Supra* note 34 at s. 2(15).

55 *Supra* note 34 at s. 34.

56 *Supra* note 34 at s. 26.

57 *Supra* note 34 at s. 24(1)

58 C. Yamuna Menon, "Time for Change?: CLPR'S Draft Equality Bill" Law School Policy Review, available at: <https://lawschoolpolicyreview.com/2019/06/22/time-for-change-clprs-draft-equality-bill-2019/> (Last visited on Oct. 15, 2021).

59 International Commission of Jurists, "Unnatural Offences: Obstacles to Justice in India Based on Sexual Orientation and Gender Identity" 46 (2017).

60 *Supra* note 34 at s. 28.

61 *Supra* note 34 at s. 28(1)(h).

62 *Dr. Ramesh Yeshwant Prabhoo vs Shri Prabhakar Kashinath Kunte*, 1996 (1) SCC 130

63 *Supra* note 34 at s. 24(4).

64 Tara Khandelwal, "Video Of Kochi Metro's Transgender Staff Goes Viral", *shethepeople*, available at: <https://www.shethepeople.tv/news/video-of-kochi-metros-transgender-staff-goes-viral/> (last visited on November 14, 2021)



because of different personal characteristics. This discrimination is a result of prejudice, stigma and exclusionary attitudes of the society. The anti-discrimination legislations in India are extremely fragmented, outdated and inadequate to address all forms of discrimination. The concept of intersectionality, indirect discrimination and systemic discrimination do not find any space in Indian anti-discrimination statutes. As a result of result of these gaps, Some vulnerable groups are protected better than other, while some are completely ignored. To bridge these gaps, India needs a Comprehensive Discrimination Code, that treats all forms of discrimination equally.

Though the constitution is committed to the principles of equality and non-discrimination, in the absence in the absence of a strong legislation, these rights are not realised. No matter how vast the jurisprudence on Art 14, 15 and 21 is, it only applies to actions against the state. This is where an anti-discrimination legislation becomes important, in the sense that, it gives specific content to constitutional guarantees. It is binding not just on the state but also on individuals and corporations, thereby, extending the reach of the right to equality to the domain of employment, housing, education, healthcare and goods and services available to the public.

Given the atmosphere of intolerance that is prevailing in the country, an anti-discrimination law is more needed now than ever. The Equality (Prohibition on Discrimination) Bill, 2021, is comprehensive and inclusive enough to supplement the constitutional provisions of equality and will hopefully find its place in the statute books.

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