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ANTI-DISCRIMINATION LAW

**MOST IMPORTANT
NOTES FOR MAINS**



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GS 2- POLITY & SOCIAL JUSTICE

ANTI DISCRIMINATION LAW

Discrimination in multiple forms takes away the right to a dignified life as guaranteed by the constitution. In this context, discuss the need for an anti-discrimination law.

In India, discrimination pervades every aspect of life in India, from access to basic goods, to education and employment. But, on other occasions, the discrimination is indirect and even unintended. 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. In certain cases, the Supreme Court also endorsed such restrictive interpretation. All this points to the need for comprehensive legislation.

Need for Anti-discrimination law

- **Article 15(1)** of the constitution **prohibits the state** from discriminating against individuals on basis of religion, race, caste, sex and place of birth. But does not prevent discriminations based on ethnicity, linguistic identity, nationality, marital status, sexual orientation, minority, disability, etc. and **it does not bar private individuals or institutions** from doing what the state is not permitted to.
- A recent **study of Pew Research** center shows that a substantial number of Indians prefer not to have a person from a different religion as their neighbors.
- Sachar committee and commission headed by Prof. N. K Madhava Rao suggested the need for an anti-discrimination law.
- In April, the SC, in **Patan Jamal Vali vs State of Andhra Pradesh** recognized intersectional discrimination, which is on the basis of the

intersection of personal characteristics, such as that faced by Dalit women as Dalits, as women and in the unique category of Dalit women.

- More than 70 years after Independence, our society remains rife with **structural discrimination**.
- India is **unique among democracies** in that a constitutional right to equality is **not supported by comprehensive legislation**.
- **In Countries like** 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.
- Anti-discrimination law is necessary to **fill the legal gap**.
- Instances of **Racial Discrimination**: Former West Indies captain Darren Sammy has alleged that he was subjected to racist comments during the Indian Premier League match in Hyderabad.
- Section 377 of the Indian penal code which criminalizes relations between same-sex adults was struck down by the SC of India. However, prejudice towards the LGBTQIA+ community remains strong. Deep rooted prejudice should be addressed.
- The efforts of **Kerala state to draft an anti-discrimination law** is appreciable. There is provision for 'Kerala Equality Commission' in it. State initiatives are necessary for progress.

CHALLENGES

- India's social structure and cultural diversity remains a hindrance to implementing such law.
- Indian society is in the clutches of deep-rooted prejudices. e.g., against LGBTQ+ community.
- Gender inequality is dominant in all walks of Indian life. The World Economic Forum's (GEF) Global Gender Gap Report 2021, India is ranked 140 out of 156 countries.

- Indian society is predominantly a rural society where a large section of the population live in villages. Every village has its own social stratification that is practiced for generations so making a law will not bring much impact in rural society.
- Economic inequality is wider in India as per Oxfam Report top 1% population holds more than 50% of Nations wealth, which has become wider during pandemic, this also creates discrimination in Indian society.
- Lack of Awareness and Conservative attitude is a challenge to anti-discrimination efforts.

Way Forward

- Strengthen the right to equality in a practical way to democratize our culture. E.g. recently a school in Kerala adopted gender-neutral uniform
- Law should prohibit all kinds of discrimination under ethnicity, linguistic identity, nationality, marital status, sexual orientation, minority, disability, etc.
- A decentralized institutional set up apart from judiciary is needed, to enquire about the complaints and make necessary policy recommendations to the government.
- Make a suitable law which can address the culture of discrimination.
- Recently MP Shashi Tharoor has proposed an Anti-discrimination bill to the house in 2016. The proposed law treats harassment, bullying, segregation, boycott, violence and victimization as the various levels of discrimination. Such a comprehensive law is necessary.
- State is empowered to make anti- discrimination law under Entry 8 of List III, seventh schedule. Therefore, state legislations will create demand for a national anti-discrimination law. The law alone is not enough to deal with the deep-rooted prejudices but it is a right step.

Any reasonable conception of Justice would demand that we look beyond the intentions of our action and at the engrained actions of society. To that end idea of enacting a law that ameliorates our ways of life that will help reverse our deep-rooted culture of discrimination is worth considering.

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THE UNBEATABLES 2023

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