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BETWEEN PROMISE AND PRACTICE: THE EQUALITY GAP IN LAWS FOR SCHEDULED CASTES AND SCHEDULED TRIBES, TRANSGENDER PERSONS AND PERSONS WITH DISABILITIES.

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Abstract

The Constitution of India guarantees equality before law. The idea of equality is one of the most important principles in law and democracy. Our Constitution allows special provisions for disadvantaged, disabled, backward classes and gender minority individuals. Nevertheless, there is a huge downfall in what legislations aims at and what people actually experience in reality. Due to these disparities the socially disadvantaged communities suffer discrimination in everyday life.

Discrimination in India is deeply rooted in patriarchal bias, rigid caste system, religious tensions etc. To overcome this long-standing disparity, India needs effective enforcement, comprehensive legislation, strengthened institutional framework and awareness. Equality must be evident from paper to practice.

India has enacted several legislations to prevent discrimination against marginalised communities such as Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, The Right of Persons with Disabilities Act, 2016 and Transgender Persons (Protection of Rights) Act, 2019. These statutes aim to ensure substantive equality rather than formal equality, which means promoting practice of equality in real world. However, challenges such as weak implementation, lack of awareness and limited access to justice reduce their effectiveness.

This paper critically examines the gap between legal promises and actual practice. Even though, India has a strong legal framework, there exist a decline in implementation, awareness and access to justice. Real equality requires better implementation, greater public awareness and easy access to justice. Bridging this gap is necessary to ensure that equality becomes a lived reality and not just a written promise in law.

Keywords – Prevention of Atrocities,

I. INTRODUCTION

Formal equality starts from the presumption that all persons should be treated alike and is devoted to addressing the question to what extent differential treatments are legitimate. In contrast, Substantive equality does not contemplate with equal or unequal treatment, but with disparate

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impact of the treatment, without regard to whether it results from equal or differential treatment.¹¹³

Equality gap means that the distinction between what legislation promises and what the groups facing institutional discrimination actually experience in the society. In formal equality, law treats everyone equally, that is equality before law and equal protection of laws.¹¹⁴ Substantive equality recognises deep rooted socio structural exclusion. Therefore, power to make special provision for the advancement of marginalised communities¹¹⁵ and reservation for appointments in public employment¹¹⁶ are incorporated in the constitution. The equality gap in this scenario arises when formal equality limits to exist on paper and due to lack of literacy, poor documentation and reduced legal services prevents disadvantaged sections from accessing their rights.

II. CONSTITUTIONAL PROVISIONS

In the Preamble of the Constitution topmost priority is given to social justice by guaranteeing a Sovereign, Socialist, Secular and Democratic Republic by securing justice, liberty, equality and fraternity to all its citizens. Constitution further provides protection from all kinds of discrimination under the following articles.¹¹⁷

The idea of equality is a basis of social justice and this is enshrined in Article 14 of the Constitution. According to Article 14 the state shall not deny to any person equality before law or the equal protection of laws within the territory of India.¹¹⁸ Article 14 put forward two concept i.e. “equality before law and “equal protection of law”.¹¹⁹

The concept of “equality before law” ensures that there is no special treatment or privilege in favor of any one, all are equally bound by the laws of the land. The second concept of “equal protection of law” means that all laws should apply to all its citizens identically. Thus Article 14 expressly states that there shall be equal protection of law and equality before the law. Therefore, whenever a member of marginalized community approaches the law enforcement system for ensuring their rights they should receive the same protection as general categories.¹²⁰

Article 15(1) guarantees that the state should not discriminate against any citizen on ground of religion, race, sex, place of birth.¹²¹ Article 15(2) prevents prohibition in access to public places like public park, road, public urinal, buses, railway etc.¹²² Its objective is to prevent social discrimination against backward classes, especially Scheduled Castes and Scheduled Tribes and Women. Articles 15(3) and Articles 15(4) are exceptions to the general rule. These provisions

¹¹³ Titia Loenen, *The Conceptualization of Equality and Non-discrimination as Legal Standards: From Formal to More Substantive Equality*, in *Nijhoff Law Specials* 111 (Brill 2021), https://library.oapen.org/bitstream/handle/20.500.12657/99069/1/9789004538368_webready_content_text.pdf.

¹¹⁴ INDIA CONST. art. 14 (1950).

¹¹⁵ Id. art. 15, cl. 4.

¹¹⁶ Id. art. 16, cl. 4.

¹¹⁷ Rajan P. & Priyadarshiee, *Law as an Instrument of Social Change: A Sociological Study of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 in Gujarat* (Ph.D. dissertation, Gujarat University, 2011), <http://hdl.handle.net/10603/5133>

¹¹⁸ INDIA CONST. § 14

¹¹⁹ Sukhwinder & Kaur, *Protection of Scheduled Castes and Scheduled Tribes with Special Reference to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: A Socio-Legal Study* (Ph.D. dissertation, Punjabi University 2014), <http://hdl.handle.net/10603/26529>

¹²⁰ Id.

¹²¹ INDIA CONST. art. 15(1) (1950).

¹²² Id. art. 15(2).

allow the state to make special laws for the protection of marginalized groups. Article 15(4) envisages the policy of compensatory or protective discrimination but it should be reasonable and consistent with the ultimate interest of the nation and community as a whole.¹²³ In *Chitrallekha v. State of Mysore*¹²⁴, the members of backward classes were granted fee concessions in public educational institutions. Also, in *PGI of Medical Education and Research v. K.L. Narasimha*¹²⁵, court held that SC/ST candidate admitted for a course on the merit basis as a general candidate shall be treated as a reserved candidate. In the above discussed case laws the court has allowed the policy of compensatory or protective discrimination for the welfare of the backward classes.

Article 16 creates a constitutional right to equality of opportunity and employment in public offices.¹²⁶ This Article can be read as an instance of application of Articles 14 and 15(1). The state can make provisions relating to the reservation in appointment in favor of any backward classes including Scheduled Castes and Scheduled Tribes.¹²⁷

In *Indra Sawhney v. Union of India*¹²⁸, popularly known as Mandal commission case, Supreme Court examined the scope and extend of Article 16(4) on various aspects of reservation provided. The observations of the court were as follows: The Backward class of citizens in Article 16(4) can be identified on the basis of Caste and not only on economic basis, creamy layer must be excluded from Backward Classes, reservation shall not exceed 50 percent, reservation can be made by 'Executive order' and no Reservation in promotions.

Article 46 ensures state shall promote with special care the educational and economic interest of the weaker sections of the people and protect them from social injustice and all forms of discrimination.¹²⁹

Apart from the above discussed provisions, constitution provides a robust framework to combat equality in Articles 330, 332 and 335 which provides reservations in legislatures and services for SC/STs, Articles 29 and 30 protect the rights of minorities to conserve their culture and establish educational institutions, Articles 38 and 39 aims to minimize inequality and ensure economic justice.

III. THE SCHEDULED CASTE AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989.

Caste system, a system of social ranking in ancient India still prevails to oppress the present-day Indian society. In ancient India society was not only ranked but also divided into different Varnas and Jatis, the Scheduled Caste and Schedule Tribes, the so-called untouchables aroused out of this rigid caste based ranking system. This differentiation led to the development of discrimination and they were subject to various forms of atrocities. The members of these

¹²³ Id. art 101

¹²⁴ *Chitrallekha v. State of Mysore*, AIR 1964 SC 1823

¹²⁵ *PGI of Medical Education and Research v. K.L. Narasimha* , (1997) 6 SCC 283

¹²⁶ INDIA CONST. art. 15(1) (1950).

¹²⁷ Sukhwinder & Kaur, *Protection of Scheduled Castes and Scheduled Tribes with Special Reference to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: A Socio-Legal Study* (Ph.D. dissertation, Punjabi University 2014), <http://hdl.handle.net/10603/26529>.

¹²⁸ *Indra Sawhney v. Union of India* , AIR 1963 SC 477

¹²⁹ INDIA. CONST. §. 46

communities were subject to inhuman treatments like slavery, untouchability, physical and sexual violence etc.¹³⁰

The framers of our Constitution were well aware about the discrimination prevailing against the scheduled castes and scheduled tribes so they provided protection under fundamental rights to lessen and eliminate all forms discrimination against scheduled castes and scheduled tribes. Additionally, law makers have enacted certain legislations to eradicate atrocities against the scheduled castes and scheduled tribes. Regardless of the Constitutional provisions and legislations enacted for the protection and upliftment of the disadvantaged, discrimination and atrocities against them is still persisting and they are suffering inhuman treatments in the society.¹³¹

Article 17 states that “untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “untouchability” shall be an offence punishable in accordance with law.¹³² In order to give effect to Article 17, parliament enacted the Untouchability (Offences) Act, 1955. A committee was constituted to analyze the implementation of this Act and the recommendations of the committee were implemented by a Bill amending the provisions of the Untouchability (Offences) Act, 1955, which was later passed as an Act by parliament in 1976 and was renamed as the Protection of Civil Rights Act, 1955.¹³³

When all the above discussed provisions of the Constitution had limited consequences in ensuring the equality among its citizens, also the existing statutes were inadequate to check the atrocities against the Scheduled Caste and Scheduled Tribes, a new legislation named “Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 was enacted by the Parliament to address the existing problems.¹³⁴

The salient features of Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act, 1989 are as follows:

1. Prohibition of Atrocities: The Act prohibits offences like coerced labor, sexual abuse, hate speech, caste-based violence etc.¹³⁵
2. Designated Courts: Act creates special courts in every district to try offences under this Act.¹³⁶
3. Relief and Rehabilitation: The Act creates provisions for the recovery and rehabilitation of the victims of caste- based offences.¹³⁷
4. Investigation Protocol: Investigation of offences under this Act is to carried out by officer holding the rank of Deputy Superintendent of Police or higher.¹³⁸

¹³⁰ Sukhwinder & Kaur, *Protection of Scheduled Castes and Scheduled Tribes with Special Reference to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: A Socio-Legal Study* (Ph.D. dissertation, Punjabi University 2014), <http://hdl.handle.net/10603/26529>

¹³¹ Id.

¹³² INDIA. CONST. §. 17

¹³³ Sukhwinder & Kaur, *Protection of Scheduled Castes and Scheduled Tribes with Special Reference to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989: A Socio-Legal Study* (Ph.D. dissertation, Punjabi University 2014), <http://hdl.handle.net/10603/26529>

¹³⁴ Pranabindu Acharya & Prachi Acharya, *An Analysis of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989* (Nov. 18, 2020), <https://ssrn.com/abstract=3732709>.

¹³⁵ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, § 3.

¹³⁶ Id. § 14(1).

¹³⁷ Id. § 15A

¹³⁸ Id. § 7(1)

5. Severe Penalties: Act impose severe penalties over victims to prevent further commission of such offences.¹³⁹
6. Grant of Anticipatory Bail: Act prohibits the enjoyment of Section 482 (anticipatory bail) of Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023.¹⁴⁰

The primary objective of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was to protect the members of scheduled castes and scheduled tribes from the atrocities committed by members of non-scheduled castes and non-scheduled tribes, but the act fails to provide the intended protection due many reasons.

The disparity between the law in paper and law in practice exist in the first step of the journey itself. Police show reluctance to file FIR under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Often complaints are filed as petty offences rather than imposing more strict provisions under the Act.

The law enforcement officers tend to misinterpret law and also tries to exploit the procedural loopholes in law. Police usually demand for caste verification certificates which are not essential for filing FIR. At times, victims are shuttled between police stations based on jurisdictional debates.

One of the fundamental challenging in implementing the Act is that offenders often hold a higher social, political and economic status or power over the victims. This situation can create a feeling of fear in the minds of the victims and they refuse to file a complaint.

In *State of Karnataka v. Ingale*,¹⁴¹ Justice Ramaswamy observed that most of cases filed under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989, are acquitted. The reason for a greater number of acquittals than convictions was stated as failure of the Act to confer powers to the Special Courts for the admission of complaints.

In *Subhash Kashinath v. State of Maharashtra*,¹⁴² Supreme Court banned the immediate arrest of persons accused for insulting a SC/ST member to protect innocents from arbitrary arrest.

In *Prithvi Raj Chauhan v. Union of India*,¹⁴³ Supreme court held that section 428 of BNSS do not apply for offences under this Act, but if compliant fails to establish prima facie case this restriction will not be applicable. Court also reversed the ruling in the case of *Subhash Mahajan v. State of Maharashtra*.

This study clearly shows that even if legislations exist for the protection of the marginalized communities, they are not sufficient for the prevention of atrocities against them. The real solution is possible only by spreading awareness among people about their rights and duties and also by trying to swipe away the procedural loopholes existing in laws.

IV. THE TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

In 2014 the Supreme Court marked a critical juncture in Indian Jurisprudence by distinguishing between biological sex and psychological sex, declaring the latter as “Third gender”.¹⁴⁴ It

¹³⁹ Id. § 3.

¹⁴⁰ Id. § 18 & 18A.

¹⁴¹ *State of Karnataka v. Ingale*, (1992) 3 SCR 284

¹⁴² *Subhash Kashinath v. State of Maharashtra*, (2018) 6 SCC 454

¹⁴³ *Prithvi Raj Chauhan v. Union of India*, (2020) 4 SCC 727

¹⁴⁴ *National Legal Services Authority v. Union of India*, A.I.R. 2014 S.C. 1863 (India).

recognised discrimination faced by gender minority communities including violence and social exclusion and laid down that they are entitled to full constitutional rights such as right to equality¹⁴⁵, freedom of expression¹⁴⁶ and right to dignity.¹⁴⁷

Subsequently, The Transgender Persons (Protection of Rights) Act, 2019 was enacted to give life to the factors put forward by the court. And the legislation aims in the protection and welfare of transgender persons. According to section 2(k) transgender person means “a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman, person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.”

It assures self-perceived gender identity.¹⁴⁸ For that, an application can be made to the District Magistrate requesting the certificate of identity as a transgender.¹⁴⁹ After the issue of certificate of identity, the gender of transgender person can be recorded in the official documents.¹⁵⁰ If that person undergoes surgery to change gender either as a male or female, the District Magistrate issue a certificate indicating change in gender.¹⁵¹

Any kind of discrimination such as denial, discontinuation or unfair treatment in education, employment, health care, proprietary and public rights against a transgender person is prohibited under the Act.¹⁵² The Act, also imposes an obligation on employment establishments to prohibit discrimination against a third gender in cases of recruitment, promotion and other related issues.¹⁵³

Welfare measures put an obligation on the Government to take all possible steps to secure social inclusion, access to welfare schemes, rescue, protection and rehabilitation of transgender persons.¹⁵⁴ To exercise the powers conferred and to perform the functions assigned to it under the Act, the Central Government constitute a National Council under section 16.¹⁵⁵ The functions of council include, to advise government on formulation of policies, monitor the impact of those policies and redress grievances of transgender persons.¹⁵⁶

Transgender people face various forms of discrimination such as racism, sexism and transphobia. Marginalization starts from their own family which hinders their education. According to 2011 census, India has around 4.87 lakh transgender people and only 56.07% are literates.¹⁵⁷ Because of under education and low literacy rates they are deprived of participation in social and political activities which consequently impacts their access to justice system and legal services.¹⁵⁸

¹⁴⁵ INDIA CONST. art. 14.

¹⁴⁶ Id. art. 19.

¹⁴⁷ Id. art. 21.

¹⁴⁸ Transgender Persons (Protection of Rights) Act, 2019, No. 40 of 2019, § 4 (India).

¹⁴⁹ Id. § 5.

¹⁵⁰ Id. § 6.

¹⁵¹ Id. § 7.

¹⁵² Id. § 3.

¹⁵³ Id. § 9.

¹⁵⁴ Id. § 8.

¹⁵⁵ Id. § 16.

¹⁵⁶ Id. § 17.

¹⁵⁷ Office of the Registrar Gen. & Census Comm’r, India, Ministry of Home Affairs, Census of India 2011: Data on Transgender Population (2011), <https://censusindia.gov.in> (India).

¹⁵⁸ Anamika Biswas & Nandini Soora, *Education of Transgenders in India: Status & Challenges*, 4 Int’l J. L. Mgmt. & Hum. 415 (2021), <https://ijlmh.com/wp-content/uploads/Education-of-Transgenders-in-India-Status-Challenges.pdf>.

Although a very few studies have conducted on transgender people, a large study conducted by UCLA Center for Health Policy Research, reveals that bisexual (40.6%), gay or lesbian adults (27.9%) are almost twice as likely to experience domestic violence as heterosexual adults (16.7%).¹⁵⁹ Domestic violence being a private offence, involving a transgender in it will again make the issue disappear in silence. It will be hard for the community to seek justice in the absence of trans inclusive anti-discrimination laws.¹⁶⁰

Even if the Act identifies self-perceived gender identity, in reality certificate of identity is required from the transgender people. And adding to this, penalty provisions are weak which shall not be less than six months but which may extend to two years.¹⁶¹ The legislation is silent on reservation benefits.

The National Crime Records Bureau recorded 236 victims, who are transgender persons not registered cases of rape in which they were victims.¹⁶² It is analysed that this is not because of low crime rate, but of lack of documentation. According to Philip C. Philip, “So, when any crime happens the police end up looking at a document with a binary marker. That is the reason the recorded numbers are so low for crimes against the transgender community.” The community being socially excluded and marginalized should get easy access to justice system. For that government should make system reachable, by building centers for assistance and appointing service providers. This move will help in assisting the community for document-related words, certificate issuance and redressal of other grievances.¹⁶³

V. THE RIGHTS OF PERSONS WITH DISABILITIES ACT, 2016

United Nations General Assembly adopted its Convention on the Rights of Persons with Disabilities on 13th December 2006. India ratified the convention on 1st October 2007. To give effect to it, The Rights of Persons with Disabilities Act, 2016 was enacted replacing the then existing Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.¹⁶⁴

According to section 2(h) of the Act, discrimination “means any distinction, exclusion, restriction on the basis of disability which is the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field and includes all forms of discrimination and denial of reasonable accommodation”

By analyzing what all disabilities are brought under the purview of legislation, we can see a broad definition such as person with benchmark disability (with not less than 40% of a specified

¹⁵⁹ Nat'l Coal. of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender and Queer Domestic/Intimate Partner Violence in the United States in 2009* 10 (2010), <https://www.avp.org/documents/2009DV-IPVREPORTFINAL2.pdf>.

¹⁶⁰ Kae Greenberg, *Still Hidden in the Closet: Trans Women and Domestic Violence*, 27 Berkeley J. Gender L. & Just. 198 (2012), <https://doi.org/10.15779/Z38J678W3D>.

¹⁶¹ Transgender Persons (Protection of Rights) Act, 2019, No. 40 of 2019, § 18 (India).

¹⁶² Ministry of Home Affairs, *Lok Sabha Unstarred Question No. 2200: Crime Against Transgender People* (Mar. 15, 2022), <https://www.mha.gov.in/MHA1/Par2017/pdfs/par2022-pdfs/LS-15032022/2200.pdf> (India).

²⁴ Vandana Bansal, *Why Only 236 Trans Person Victims of Crimes Were Recorded in India in 2020, India Spend* (June 23, 2022), <https://www.indiaspend.com/gendercheck/why-only-236-trans-person-victims-of-crimes-were-recorded-in-india-in-2020-823034>.

¹⁶⁴ The Rights of Persons with Disabilities Act, 2016, No. 49 of 2016 Preamble (India).

disability)¹⁶⁵, person with disability (long term physical or mental impairment)¹⁶⁶ and person with disability having high support needs (person with benchmark disability who needs support).¹⁶⁷ The Act specifies 21 disabilities and has arranged them under 6 categories. They are, physical disability, intellectual disability, mental behavior, disabilities caused due to chronic neurological conditions, deaf & blindness and others notified by central government.¹⁶⁸

The Act ensures that the persons with disabilities enjoy the right to equality, dignity and integrity.¹⁶⁹ Women and children with disabilities are given special mention.¹⁷⁰ Differently-abled persons also have the right to live in community access to in-house, residential and other support services.¹⁷¹ It imposes a duty on the government to take appropriate measures to protect persons with disabilities from torture, cruel, inhuman or degrading treatment.¹⁷²

Non-discrimination in employment under government establishments imposes a duty to provide accommodation, barrier free and conducive environment to the differently abled persons. It also says that not to deny promotion on the ground of disability. If disability is caused during the course of employment, no reduction in rank is permitted. If employee becomes not suitable for the employment after acquiring disability, he shall be shifted to other post with same pay scale.¹⁷³

Under section 23, a grievance redressal officer is appointed to investigate the grievances and every complaint shall be inquired within two weeks.¹⁷⁴ In every government establishments 4% of total number of vacancies are meant to be filled with persons with bench mark disabilities comprising, persons with blindness, hard of hearing, locomotor disability and mental illness.¹⁷⁵

In order to achieve inclusive education of differently abled children, it is suggested to admit them in the educational establishments funded or recognised by the government. To make them avail of all the benefits, provision for accessible buildings, reasonable accommodation and disability-inclusive environment are ensured.¹⁷⁶ Ensuring accessibility or not to exclude them in the society, the Act mention inclusive sections like accessibility for physical environment, access to transport¹⁷⁷, information and communication technology¹⁷⁸, and technology systems.¹⁷⁹

The shift from medical model to human rights model by upholding that a person does not have to meet 40% benchmark to be entitled to scribe was a turning point in Indian human right jurisprudence, which paved way for framing fresh guidelines for access of scribes on case basis rather than a rigid rule.¹⁸⁰

¹⁶⁵ Id. § 2(r).

¹⁶⁶ Id. § 2(s).

¹⁶⁷ Id. § 2(t).

¹⁶⁸ Bimal Chandra Nanda, *Disability and Empowerment: A Reading through the Rights of Persons with Disabilities Act, 2016*, 8 *Mind & Soc'y* 18 (2019).

¹⁶⁹ The Rights of Persons with Disabilities Act, 2016, No. 49 of 2016, § 3 (India).

¹⁷⁰ Id. § 4.

¹⁷¹ Id. § 5.

¹⁷² Id. § 6.

¹⁷³ Id. § 20.

¹⁷⁴ Id. § 23.

¹⁷⁵ Id. § 34.

¹⁷⁶ Id. § 16.

¹⁷⁷ Id. § 41.

¹⁷⁸ Id. § 42.

¹⁷⁹ Id. § 40.

¹⁸⁰ AIR 2021 SC 2447

According to Halvorsen and Neary (2001), “Inclusion differs from mainstreaming in that students are members of only the general education classroom and do not belong to any other specialized environment based on their disability.” Although, inclusive education is a broad and well accepted thought, it lacks a unique care which a special child demands. Full inclusion is not beneficial for all children. Special education such as occupational therapy and speech therapy is not given under general education system and teachers are also not trained to it.¹⁸¹ Disability makes a person different from others and treating such an individual as normal under regular school through inclusive education is like treating unequals equally. This is a kind of abandoning the special care and support they need.¹⁸²

Even if the law guarantees full access, the wheel chair users and disability advocates in Mumbai says that the city remains far from accessible for them. They are still inaccessible to most of the ATM, public infrastructure and transportation. And also, except a very few banks, the majority have not installed visually-impaired friendly ATM.¹⁸³

A complaint that was raised against the Ghaziabad collectorate building reveals that the integral part of district governance is not accessible to the disabled due to unavailability of ramps, lifts and other amenities.¹⁸⁴

An important ground which causes implementation issue is the lack of awareness among authorities and disabled persons.¹⁸⁵ Making the law from paper to practice is a crucial step which faced considerable hurdles is evident from the series of orders passed in *Seema Girija Lal v Union of India*.¹⁸⁶

Increasing awareness of the Act among people, especially in rural areas will help for better implementation of laws. A barrier-free environment like disabled-friendly public places, transportation and other facilities will make them feel considered. More stringent punishments for non-compliance of Act are necessary. Finally, giving necessary support and proper training for teachers to make inclusive education essential for ensuring quality education.

VI. CONCLUSION

The frame work of Indian anti-discrimination law demonstrates unavoidable commitment to equality. The Constitutional provisions guaranteeing equality, The Scheduled Castes and Scheduled tribes (Prevention of Atrocities) Act, 1989, Transgender Persons (Protection of Rights) Act, 2019, and Rights of Persons with Disabilities Act, 2016 provides protection against all forms of discrimination and atrocities within the statutory rights. Together, these statutes demonstrate

¹⁸¹ Kristine McCarty, *Full Inclusion: The Benefits and Disadvantages of Inclusive Schooling: An Overview* (2006), <https://files.eric.ed.gov/fulltext/ED496074.pdf> (last visited Feb. 27, 2026).

¹⁸² Jayanta Boruah, *Right to Education for Persons With Disabilities in India: An Analysis of the Contemporary Legal Developments*, Sarkari School E-Newsletter Vol. 1 (Dec. 1, 2020), at 1, <https://ssrn.com/abstract=3821873> (DOI: 10.2139/ssrn.3821873).

¹⁸³ On Paper, Equal, On Ground, Excluded: Mumbai’s PwDs Struggle for Accessibility, *Times of India* (Dec. 3, 2025, 5:55 IST), <https://timesofindia.indiatimes.com/city/mumbai/on-paper-equal-on-ground-excluded-mumbais-pwds-struggle-for-accessibility/articleshow/125723126.cms>.

¹⁸⁴ No ramps, no lifts, Ghaziabad collectorate out of reach for disabled, *Times of India* (Jan. 13, 2026), <https://timesofindia.indiatimes.com/city/noida/no-ramps-no-lifts-ghaziabad-collectorate-out-of-reach-for-disabled/articleshow/126360478.cms>.

¹⁸⁵ Suresh Bada Math et al., *The Rights of Persons with Disability Act, 2016: Challenges and Opportunities*, 61 *Indian J. Psychiatry* S809 (Supp. 4 2019), https://doi.org/10.4103/psychiatry.IndianJPsychiatry_105_19.

¹⁸⁶ Writ Petition (Civil) No. 29329/2021.

shift from formal equality to substantive equality. Due to various challenges like low conviction rates, bureaucratic gatekeeping, limited access to justice, social impediments etc., equality in paper has not developed to equality in lived experience.

If right to equality guaranteed under Article 14, 15 and 21 has to gain life, the anti-discrimination law should grow beyond explicit restraints towards institutional accountability. This requires institutional reform independent monitoring bodies, mandatory equality impact assessments, data transparency, victim-centred procedures, and budget-linked implementation frameworks. Transformative constitutionalism demands not only the recognition of marginalized communities but the eliminating of systemic hierarchies that inhibit their full participation in public life.

Ultimately, the promise of equality in India does not suffer from legislative scarcity but from enforcement deficit. To effectively implement anti-discrimination laws a comprehensive anti-discrimination law addressing direct, indirect, structural and intersectional discrimination is necessary. Also, it is significant to strengthen enforcement bodies like National Commission for scheduled castes and scheduled tribes, National human rights commission etc. Improving access to justice by ensuring effective participation of special courts, providing legal aid and implementing witness protection schemes would improve the effectiveness of anti-discrimination laws. Further, administrative reforms such as mandatory anti-discrimination policies, data collection, sensitization training, periodic compliance audits, review of implementation reports, social impact assessments are essential. Courts should continue to expand the doctrine of substantive equality.

The future of anti-discrimination jurisprudence lies not in enacting more rights, but in ensuring that the rights already guaranteed are experienced as real, accessible, and enforceable by those for whom they were enacted.