

Human rights and disadvantaged section of the society of India: A study

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Abstract

The meaning of the disadvantaged section is an ambiguous term. However, in the general meaning, it is understood that people who are easy gets trapped into a physical or emotional journey, or subject to unnecessary criticism or in the disadvantaged position in the society are termed as disadvantaged people. To stop these practices, the international community of nation-states came front and made several instruments with the help of international human rights to protect these people from discrimination in the future. Accordingly, the United Nations has adopted several declarations, conventions and covenants to uplift the rights of these people. In keeping the mind of all these the Government of India makes laws from time to time to protect these sections of the society. Even the judiciary also comes forward to protect these sections whenever needed or no specific laws to protect these people.

Keywords: disadvantaged section, united nations, human rights

1. Introduction

The meaning of the disadvantaged section is an ambiguous term. However, in the general meaning, it is understood that people who are easy gets trapped into a physical or emotional journey, or subject to unnecessary criticism or in the disadvantaged position in the society are termed as disadvantaged people. In the language of human rights, disadvantaged people may be defined as, "certain groups of the population who often encounter discriminatory treatment, or need some kind of special attention for the protection of the state to avoid explanation or form a harmful environment."

The disadvantaged people are who are discriminated against by sex, race, birth in a particular community, religion or disability. The classification of these groups is based on socio, economic, cultural perspectives which vary from country to country. In a general sense, women, children, socially, economically. Culturally deprived sections, disabled, minorities, etc. form part of disadvantaged groups. Poverty is the main contributing factor towards the degradation of the status of these people that are classified as disadvantaged groups^[1].

2. Concept of Disadvantaged groups

The concept of disadvantaged groups can be traced back to ancient times. In every society, there are several incidents can be found, where these people were treated differently from other sections of the people of the society. The discrimination was been done in various ways like humiliation, harassment, socially, culturally, economically, politically and many more ways. These sections of people were treated like this because other sections of society do not want these people to come front and take part in various social activities. They were deprived by their life and liberty, economically and intellectual capacities so that they

can serve wealthy and governing people of the society.

To stop these practices, the international community of nation-states came front and made several instruments with the help of international human rights to protect these people from discrimination in the future. Accordingly, the United Nations has adopted several declarations, conventions and covenants to uplift the rights of these people. Time to time the United Nations with the help of the Human Rights Council regularly formulate several guidelines for implementation by the states to eliminate the threats against the disadvantaged people.

3. Objectives of the Study

The Present study seeks to explore the human rights of disadvantaged sections of the society in India, laws relating to it and judicial approach for protection of these sections.

4. Research Methodology

The methodology adopted for this study is a *doctrinal method*. However, the present study is an analytical one. The study has referred to the Constitution, legislation, case laws, and existing *secondary sources* such as books, papers, and other published web resources.

4. Disadvantaged Sections and the Indian Society

- **Women-** Women always face discrimination and violence for being members of a particular caste, class or ethnic group. The average maternal mortality ratio at the national level is 540 deaths per 100,000 live births^[2].
- **Children-** Children who are the weakest part of the societies. Children always face discrimination for their caste, religion and ethnicity even having a Constitutional guarantee of civil rights. Children's

¹ Steven E. Mayer, "What is a disadvantaged group?" available at: <https://effectivecommunities.com/sem/> (last visited on 17 April, 2020).

² National Family Health Survey-2, 2000, available at: <http://rchiips.org/nfhs/nfhs2.shtml> (last visited on 17 Dec, 2018).

rights to basic services are affected since the basic need for birth registration that will assure them nationality and identity also remains unaddressed.

- **Refugees**- The refugees are persons deprived of the protection of the country of their nationality or, where they have no nationality, of the protection of the country of their habitual residence. “Their very position, the frequent uncertainty of their nationality status and even of their domicile, is bound to create additional legal problems. Serious disabilities, unintentional discrimination by the normal operators of law, are frequently the consequence^[3].
- **Transgender**- The harassment faced by transgender people is unashamed and they suffer physical and mental pain every day. The administration, as well as society, treats them as unequal and therefore there is a need to change the mindset of the people that they are also human beings who are also needed to be treated equally like another gender.

5. Disadvantageous Sections and the law in India

• Women^[4]:

Article 15(3): State can make special provisions for women and children.

Article 39: Ensures equal pay to women for equal work.

Article 40: Provides 1/3 reservation in panchayat to women.

Article 42: Provision for just and humane conditions of work and maternity relief.

Legislation enacted for Women

1. Child Marriage Restraint Act, 1929.
2. The Hindu Marriage Act, 1955
3. Maternity Benefit Act, 1961.
4. The Dowry Prohibition Act, 1961.
5. Immoral Traffic (Prevention) Act, 1986.
6. Indecent Representation of Women (Prohibition) Act 1986.
7. Commission of Sati (Prevention) Act 1987.
8. National Commission of Women Act 1990.
9. Prenatal Diagnostic Technique (Regulation and Prevention of Misuse) Act, 1994.
10. Protection of Women from Domestic Violence Act, 2005.
11. The Sexual Harassment of Women at Workplace Act, 2013

• Children

Article 15(3): State can make any special provision for women and children.

Art. 24: Prohibition of employment of children below 14 yrs of age in factories or any hazardous processes.

Art. 45: Provision for early childhood care and education for children below the age of six years.

Legislations enacted especially for Children:

1. Child Labour (Prohibition & Regulation) Act, 1986.
2. The Pre-conception & Pre-natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994.

3. Juvenile Justice (Care and Protection of Children) Act, 2000.
4. Commission for Protection of the Rights of the Child Act, 2005.
5. Protection of Children from Sexual Offences Act, 2012.
6. The Child Marriage Restraint Act.

• Refugees^[5]:

Article 14: Equality before law.

Article 20: Protection in respect of conviction of offences.

Article 21: Protection of life and personal liberty.

Article 22: Protection against arrest and detention in certain cases.

Article 32: Remedies for enforcement of rights conferred by this part.

Legislations enacted especially for Refugees:

1. Immigrants (Expulsion from Assam) Act, 1950.
2. Administration of Evacuee Property Act, 1950.
3. Evacuee Interest (Separation) Act, 1951.
4. Displaced Persons (Debts Adjustment) Act, 1951.
5. Influx from Pakistan (Control) Repelling Act, 1952.
6. Displaced Persons (Claims) Supplementary Act, 1954.
7. Displaced Persons (Compensation & Rehabilitation) Act, 1954
8. Transfer of Evacuee Deposits Act, 1954
9. Foreigners Law (Application & Amendment) Act, 1962
10. Goa, Daman & Diu Administration of Evacuee Property Act, 1969
11. Refugee Relief Taxes (Abolition) Act, 1973

• Transgender^[6]

Article 14: Equality before law.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

Article 21: Protection of life and personal liberty.

Legislations enacted especially for Transgender

The Transgender Persons (Protection of Rights) Act, 2019.

6. Judicial Approach towards Disadvantageous Sections of the Society

The judiciary has played an important major role from time to time whenever needed. They always stood up and protect the rights of the disadvantaged section whenever their rights are being violated as a human being. Previously, the judiciary was restricted to provide justice in the cases of human rights but after the case of *Maneka Gandhi*^[7], the judiciary has evolved the new concept of judicial activism to provide justice in the cases which are related to human rights.

The Indian Penal Code, 1860 which defines rape and provides punishment for this offence^[8] but still this offence which violates women's rights are being reported from time to time. Rape cases always require extra care from the police. To make them feel comfortable the victim of this crime statement is being recorded by a woman police officer. Similarly, there were always been sexual harassment at workplace^[9], but to prevent the woman from these

⁵ See, Constitution of India, 1950.

⁶ See, Constitution of India, 1950.

⁷ *Maneka Gandhi v. Union of India*, AIR 1978 SC 597.

⁸ See, Indian Penal Code, 1860, ss 375-376D

⁹ *Vishakha v. State of Rajasthan* AIR 1997 SC 3011

³ Paul Wies, “The International Protection of Refugees” 48 AJIL 193 (1954).

⁴ See, Constitution of India, 1950.

offence the judiciary stood up as there was no domestic law was there to prevent it, formulate the guidelines to prevent a woman from these type of offences and also instructed that till any legislation is not being formulated for this matter, the guidelines must be strictly followed in every workplace and if there is a violation of these guidelines the offender will punish.

In *Municipal Corporation of Delhi v. Female Workers* ^[10], the Court ordered that the daily wage women employees have the right to claim for the maternity benefit because in Article 5(b) of CEDAW has recognized that childbearing is the role of women as a social function. In *Gita Hariharan v. Reserve Bank of India* ^[11], the Court held that a mother can also be the guardian of the minor child.

The Law Commission of India has been directed to make stronger laws or strengthen the existing laws to deal with child sexual abuse ^[12]. Children who are being rescued from the brothel under the Immoral Traffic (Prevention) Act needed to be treated as a child with special care and protection and produce them before the child welfare committee ^[13].

In *Sheela Barse* ^[14] case, the Court held that the children may not be kept in jail if the state government does not have sufficient remand homes or observation homes then the children may be released on bail.

The transgender always gets harassed and humiliated by society as they were not treated properly. So, the judiciary came front when it was challenged before the court. They are argued that should also have the same equal rights as other citizens as given to them by the law. There is a need for recognition of the third gender. In the *NALSA* ^[15] case, it was argued that various international forums and UN bodies have recognized the third gender and referred to the Yogyakarta Principles and also pointed out that many countries have recognized the transgender as the third gender and it is the time for India to do also.

In January 2018, The Supreme Court refers the case to Section 377 for validity to the larger bench. On request from the several petitions, the government announced that they will not oppose any petitions and leave the case to “wisdom of the court” On September 6, 2018, the Supreme Court issued its verdict where they unanimously ruled that Section 377 is unconstitutional as it infringes the fundamental rights of autonomy, intimacy and identity, and thus legalized the homosexuality in India.

Whenever there is an arrest of a refugee by the Indian authorities, there is a chance of refoulment, repatriation or deportation. Those refugees who are staying illegally can be arrested and detained illegally without charges under the administrative order. *Hans Muller of Nuremberg v. Superintendent, Presidency* ^[16], gave “absolute and unfettered” power to the government to throw out the foreigners. This judgment was upheld by the Supreme Court in *Mr. Louis De Raedt & Ors v. Union of India* ^[17], and held that foreigners have also right to be heard. In *Ktaer Abbas Habib Al Qutaifi vs Union of India* ^[18], the High Court held

that the principle of that the rule of non-refoulment avoids expulsion of a displaced person where his life or freedom would be damaged by his race, religion, nationality, enrollment of a specific social gathering or political conclusion.

7. Conclusion

In the Constitution of India, the three pillars of human rights are the “the Right to Equality”, “The Six Vital freedoms of citizens” and “Right to life” guaranteed to every person which are recognized as inalienable and part of the basic structure of the Constitutions. If we see from the perspective of human rights, every person has a right to receive basic amenities that are needed to survive. India has taken an important initiative to reserve one-third of all seats for women in urban and local self-government to empower women ^[19]. The Government of India and the judiciary always come front to protect these disadvantaged sections of the society.

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¹⁰ AIR 2000 SC 1274

¹¹ AIR 1999 SC 1149

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¹⁴ *Sheela Barse v. State of Maharashtra*, AIR 1986 Sc 1773

¹⁵ *NALSA v. Union of India*, WP (Civil) No. 604 of 2013.

¹⁶ 1955 SCR (1) 1284

¹⁷ 1991 SCR (3) 149

¹⁸ 1999 CriLJ 919

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