

# Housing: We need a law against discrimination

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Amulya Gopalakrishnan / TNN / Jun 21, 2015, 00:02 IST

A recent study showed how home owners in NCR were discriminating against Dalits and Muslims. In an interview to Amulya Gopalakrishnan, Tarunabh Khaitan, associate professor in law at the University of Oxford and the author of A Theory of Discrimination Law, talks about the implications of segregation.

What is the problem with housing discrimination, like instances when Dalits and Muslims are denied rentals?

Consider a hypothetical case: a landlady refuses to let her house to me because my zodiac sign is Capricorn.

Her eccentric refusal does not affect my opportunities; none of us can claim to have a moral right to live in any particular house. Now imagine if discrimination against Capricorns was so pervasive in the housing market that whole swathes of a city became unavailable to us. We might be obliged to live in tiny pockets that let us in, and are likely to have many other Capricorns. Such a neighbourhood will soon become a Capricorn ghetto. Let us also assume that prejudice against Capricorns also exists in government, jobs, shops, services, and education. It is likely that this ghetto will have relatively poor job options, schools, sanitation and civic amenities. Dalits and Muslims are in a similar situation (see the Sachar Committee report and studies by Prof S K Thorat). Other groups, including single women, unmarried couples, the disabled, gays and transgenders are also likely to face similar exclusions. For victims of such pervasive discrimination, the implications are obvious. Not only are they stigmatized and humiliated, their freedom of movement is also curtailed. They also lose out on other civic goods that go hand-in-hand with housing. Even if these urban ghettos had adequate amenities, there is something repugnant in an apartheid-like segregation of neighbourhoods. For society, such segregation is a moral loss that makes fraternity and equal citizenship impossible. A society that permits pervasive forms of discrimination against minorities cannot become a true political community.

Landlords justify it as a private decision to choose tenants they are comfortable with — vegetarians, or married couples, for instance. Can the state regulate these private choices?

We all have the right to act as we wish, so long as our actions don't illegitimately harm others. Our Capricorn-phobic landlady need not answer to the law. But regulation becomes legitimate when discrimination becomes pervasive and enduring: when so many landlords start excluding a group that its members can't access basic goods that facilitate a good life. Liberals across the world have accepted this to be a justified state intervention. That said, the law could accommodate legitimate privacy interests.

What solution, legally and socially, do you recommend to check discrimination?

India is almost unique amongst liberal democracies in lacking a comprehensive, multi-ground, anti-discrimination statute. In other jurisdictions, such statutes typically prohibit discrimination on morally extraneous grounds like race, caste, tribe, sex, disability, sexual orientation, religion, pregnancy, marital status, gender orientation, etc. They prohibit direct discrimination (where all victims belong to the same religion or caste, like a sign saying 'No Muslims') and also indirect discrimination (like a sign saying 'vegetarians only' which may disproportionately affect some groups like Muslims, Christians or Dalits through cultural food preferences). Indirect discrimination is relatively easier to justify than direct discrimination. These statutes apply to (public and private) employers, landlords, retailers, and service providers. They also permit affirmative action in favour of disadvantaged groups: this is not considered discriminatory. Importantly, they provide civil rather than criminal remedies for acts of discrimination: the sledgehammer of criminal law can often be counter-productive when dealing with discrimination. Considered alongside Indian realities, the Canadian and South African laws that address discrimination, and the meticulously drafted British Equality Act can be instructive. The US Title VII and Title VIII may be the mother of such statutes, but it is currently facing a reactionary backlash: we should look at the US mainly to learn from their mistakes.

What legal recourse can a victim take?

Currently, it is not clear whether a Muslim victim has any available statutory remedy. If a Dalit person is denied housing on the ground of untouchability, the under-enforced provisions of the Protection of Civil Rights Act 1955 provide limited criminal remedy. There may, however, be a constitutional remedy. The prohibition on discrimination under Article 15 of the Constitution applies to private persons too, and not just the state. However, some clarity is urgently needed from the courts, especially after the limited conclusions of the Zoroastrian Housing Society case (2005). Ultimately, however, the solution is a comprehensive anti-discrimination law. Like Right to Information statutes, state legislatures could lead the way.