

DISCRIMINATION ON THE BASIS OF FAMILY STATUS

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Abstract

Our relationships with our families lie in our instinct. We humans take it as an obligation to provide social, emotional physical, financial support and care to our family members and expect the same from our families to provide whenever needed. This study will analyse the current scenario of Pakistan where most of the workers supporting their families more significantly by providing all possible means of comfort. But these workers are suffering and getting discriminated directly on the ground of family status who are constant source of care in our society weather for children or ageing parents or relatives with disabilities. This frequent recognition, value and support towards their family make them suffer in getting job or if already doing job does not let them to opt for better opportunities. For instance, a mother having disable child might lose her job because of inflexible job timings. Women do not get promotions because of the general perception that women with familial responsibilities are not committed to their work. Or in case of men having ageing parents to look after alongside with their family responsibilities are discriminated due to the very reason as the employers not offering opportunities to one with such responsibilities.

This paper is an attempt to figure out the situation of Pakistan where discrimination is made on the ground of family status. Under human rights code section 13 “it is unlawful to discriminate on the ground of family status in any of the prohibited areas of public life”

In Pakistan, all provinces and federal government have human rights legislation to address but discrimination on the basis of family status is relatively new and is needed. Furthermore, this issue has never been addressed by the legislators or on any other forum.

Key words:

Family status, discrimination, employment, workplace.

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Objective of the study:

Objective of this study is to high light Pakistan working class who are directly or indirectly discriminated due to the reason of family status. Where different kinds of discrimination e.g. race, colour, caste, religion, social orientation etc. Has been made individuals almost every day are discriminated on the ground of family status. This study will analyse international approach and situation in Pakistan where Pakistan has ratified different conventions but has not ratified convention of working class with family responsibilities 1981.

What is family status?

There are couple of definitions explaining family status “*The status of being related to another person by blood, marriage, or adoption.*”

Family is the basic unit upon which the former generation give birth to the future generations. In practice family is the fundamental social unit through which the new born is introduced to the world and as a result child learns the fundamentals of language, behaviour, values norms and many other traits of his surroundings and his own character. In short family status is all about the environment of cooperation between man and women and the domains of a child earliest upbringing. In Islam family status is all about the educational environment which includes both spiritual and intellectual. It is about mutual noble sentiments particularly in between the married couple and other family members in general.

In Islam family is built upon holy bond and mutual contract of love and kindness between two hearts. Quran says

وَمِنْ آيَاتِهِ أَنْ خَلَقَ لَكُمْ مِنْ أَنْفُسِكُمْ أَزْوَاجًا لِتَسْكُنُوا إِلَيْهَا وَجَعَلَ بَيْنَكُمْ مَوَدَّةً وَرَحْمَةً إِنَّ فِي ذَلِكَ لَآيَاتٍ لِقَوْمٍ يَتَفَكَّرُونَ

“*And among His wonders is this: He creates for you mates out of your own kind, so that you might incline towards them, and He engenders love and tenderness between you: in this, behold, there are messages indeed for people who think*”

Defining Discrimination;

Islam is religion of humanity and kindness and humanity for every living creature on the earth. Islam condemns discrimination, Allah says in his book everyone is equal;

“O mankind, we have created you from male and female, and we have divided you in to tribes and sub-tribes for greater facility of intercourse. Verily, the most honoured among you in the sight of Allah is he who is the most righteous among you. Surely, Allah is all Knowing, All Aware”

In plain English, to discriminate means to make a distinction, single out or to distinguish. In daily life, when we face more than one options we discriminate in making almost every decision. But in the context of law, unlawful discrimination refers to unequal or unfair treatment of an individual or group of people on several grounds which includes age, disability, ethnicity, gender, marital status, race, religion, national origin etc. The object of the anti-discrimination laws is to prevent the violation of human freedom and dignity though he imposition of stereotyping, political or social prejudice. Differential treatment because of family status will clearly be discriminatory. It is to be noted not every distinction may be considered discriminatory however in some cases it may be necessary to consider whether the treatment is based on discrimination in the sense of being protected by human rights law.

There are different ways of defining and identifying discrimination based on family status as it includes exclusion, restriction preference or distinction based on family status that results in the violation of fundamental human. UDHR is universally accepted as Prof Humphrey write down *“whatever its drafters have intended in 1948 is now part of customary law of nations, therefore binding on all states.”* This statement is supported by the state practice. It has been considered that UDHR has all the traits of jus cogen. It’s true in its spirit but there is little doubt in that of right to equality and non-discrimination has the traits of jus cogen as the rights appear in both UDHR and ICCPR. In ICCPR the status of jus cogen is made explicitly clear that during public emergency when the life of nation is threatened the parties might take steps derogatory from certain obligations but such measures may not involve discrimination solely on the basis of race, colour, sex, religion, social language.

The Universal declaration of human rights U D H R explains the equal rights as the principle of equality imbued the declaration. Of the thirty articles, most of them overlap explicitly concerned with equality as in the following articles of U D H R:

Article 1: *All human beings are born free and equal in dignity and rights.*

Article 2: *Everyone is entitled to all the rights and freedoms set forth in the universal declaration without distinction of any kind such as race, colour, sex, language, religion, political or the other opinion, national or social origin, property, birth or other status.*

Article 7: *All are equal before law and are entitled without any discrimination to equal protection of the law.*

The two most important covenants which provides means of implementation are the ICCPR, 1966 the covenant on civil and political rights, and ICESCR, 1966 the covenant on economic, social, and cultural rights, the principle clause on non-discrimination is found in Article 26 of the ICCPR:

“All persons are equal before the law and are entitled without any discrimination to equal protection of the law. In this respect, the law shall prohibit discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion national or social origin, property, birth or other status.”

The ICESCR also have general and specific non- discrimination clauses which is alike to ICCPR.

International comparative approach and situation in Pakistan.

Under the Ontario human rights code, people in a parent child relationship have right to equal treatment in the work place. This means that employers cannot discriminate in hiring, promotion, training, benefits, workplace conditions, or termination of employment because person is taking care of a child or parent.

We must understand that how an employee is discriminated on the basis of family responsibilities for instance if the treatment is biased one just because he had dependents to look upon and care after and in such situation where the employee never treated if he has no dependents. To quote here the supreme court of Canada in *Andrews v. law society of British Columbia* describes the discrimination on the ground of family status as any preference, distinction action weather intentional or not but is based on the family status which has the motive of imposing burdens on a person or group that are not imposed on others, or with holding the

benefits, opportunities which are otherwise available to other members of the society.

In United States discrimination on the ground of family status is taken as form of sex discrimination. Number of jurisdictions are adding family status as a ground and building greater human rights protection in respect of family status and responsibilities. For instance human rights act of district of Colombia currently prohibits discrimination on the ground of family status/responsibilities. New Zealand human rights act includes “family status” under the prohibition list of discrimination. Under their code they include family status as having the responsibilities for full or part time care of children or other dependents, or being married to or being in civil union or de-facto relationship with particular person. Or being relative of particular person.

In Pakistan, there is no specific law regarding discrimination on the ground of family status. In fact, there is no concept of this very right people being unaware of their rights come across discrimination on daily basis. And those who are aware never get stand for the infringed right because the justice is delayed and once “*justice delayed is justice denied*”. The law making agencies has no proper mechanism of proposing or enforcing a new law in the state as a result the whole system collapses, state don’t take the responsibility and the individuals fails to demand for, which is the very reason weather discriminated directly or indirectly no one registers the case. Since Pakistan came in to being in 1947, not a single case has been registered in any of the court of the Pakistan where the individual is discriminated on the ground of family status and he/ she is compensated.

Discrimination at work place in Pakistan

Discrimination at workplace is not a new phenomenon. Sometimes the incident may occur where the employer discriminates against its employee in work related issues which may be in any form of hiring, firing promotions or any other benefits. Discrimination at work place may also be taken as any decision which is in favour or against of the employee biased in its spirit and is not based on the individual capabilities. Almost every state has federal laws for the protection of employees in work place. It is to be noted that discrimination in the place covers all the related issues and off course it’s obligatory on the employee part to take care of the company practices etc.

In Pakistan, the situation is not very different discrimination is made against the employees and the situation is worst because of the reason that no one takes the stand to go to the court and demand for the infringed right. Almost every institute has dozen of examples of discrimination where the employer make such decisions which are biased as a result the system of the country is not running properly for instance if we take the example of any institute it does happen where those who are capable are not given the due right and the one who has some support on the back is given that very right with passage of time adverse situation may arise the one whose right has been infringed loose the spirit of work and the one who has some kind of support does not perform the duties properly in the end result is affecting the whole of the country. Pakistan working class people mostly has the same situation and discrimination in the work place is almost made on daily basis but the question is who is going to take the stand? And ask for what has been snatched from them which they were legally entitled to.

Convention 111 discrimination in employment and occupation 1958 and Pakistan's Constitution.

Pakistan is signatory to ILO convention 111 and ratified in year 1961. where it says that "discrimination as any distinction, exclusion, or preference made on the basis of race colour gender religion, political opinion, national extraction, or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation "

It includes access to all type of occupations and employment. The ratifying state shall be pursuing such national policy which will eliminate discrimination in all forms and providing such policy which will be in the best interest of the workers or employers and this too is the state duty to introduce and launch such programmes for the acceptance and observance of such national policies. The member state has to legislate, or repeal any statutory provision or modify any administrative instructions and practice tall those polices which are in consistence with the policy. The member state has to ensure the observance of the policy in respect of vocational guidance, training, jobs under the control of national authority and annual reporting on the has to be made in respect of its progress. The constitution of Pakistan 1973 guarantees the rights of all segments of the society which includes women, children, minorities,

religion, race, social orientation and language. It also ensures the right to employment. Article 27 protects discrimination in service irrespective of race, sex, cast article 18 of the constitution ensures freedom to enter in to any lawful business or trade, profession wit out any discrimination. Article 37 (e) provides that state shall provide humane conditions of work protecting women and children employment in vocational institutes on the ground of their age for maternity benefits in employment.

Article 38 ensures “equitable adjustment of rights between employer and employees” by ensuring basic fundamental rights to the workers, employment opportunities for its citizens equal rights of education for children, equality of gender in work place ad harmonies relations between employers and employee the constitution of Pakistan indeed guarantees legislation and policy formulation.

Workers with family responsibilities convention 1981

In 1981 international labour organization adopted the workers with family responsibilities convention. Those signatory countries to it agree to “make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities”.

Pakistan has not adopted this convention; this convention is designed to prevent discrimination and promote equal opportunities for both male and female workers. It is worth noting that this convention applies to the terms and conditions of employment as well as community services and child care. The terms and conditions involve the working hours and flexibility in work schedule, paternal leave and absence to care for ill dependants.

There is dire need of adopting and implementing this convention in order to minimize the chaos the workers are facing on daily basis. It will protect the rights of workers of those who are discriminated on family status.

Legislative steps on the ground of family status at Pakistan

In Pakistan, no legislative steps have been taken for those who are discriminated on the basis of family status. Family responsibility now a

days are performed by both male and female. It becomes the most difficult task to perform both the duties actively side by side. In Pakistan, this issue has never been addressed on media and in parliament. Family responsibilities varies in its nature s it can be children care or looking after ageing parents. Workers face difficulties in keeping balance among both the duties. The conflict between their family responsibilities and work lead to the problems of individual which remains unresolved throughout his life time. It becomes the state obligation to address the needs of those with family responsibilities. And take legislative measures, if the law makers are unable to make new law for them they can take step by adopting and ratifying convention of workers with family responsibilities 1981, by ratifying this convention up to some extent those who are discriminated on the basis of family status will be protected, and their rights will be safe guard from getting infringed or violated.

Working environment at work place in Pakistan

Working environment of any place plays a vital role as it determines the productivity of its employees and weak environment can make the working place disarray. Unfortunately, we live in such country where none has been facilitated on the ground of family status. This type of situation shall be dealt with immense importance which plays important role not only in building of government but in building of whole nation. Almost every department working environment varies but the most efficient are those who provides all possible means of comfort. We live in such country where we cannot ignore the socio economic problems and the cultural problems which is shadowing the working environment of any department. Discrimination prevails and no remedy has been guaranteed to any of the employee.

Role of family system in Pakistan working class

Every country has different culture and way of livening Pakistan family system is blended form of both Islamic system and some influence it derives when it was part of India. So, we have examples of both unitary system where the couple lives at their own and joint family system which derives its roots from pre-partition history of Pakistan. Family system plays an important role in job.

For instance, if there is only one who earns and ten dependents in joint family system it becomes more difficult to survive in such a way the

balance between the work and family become impossible and when the person gets discriminated there are chances to get involved in unlawful activities or making money through corruption which results in the disaster of whole nation. It is not always the case that in unitary system there are no dependents the couple might live separately but they do share responsibilities and provide monetary help to their dependents. So, evident from the family system Pakistan law making bodies shall make such rules and regulations for the working class having dependents such that they don't get discriminated in first place and have some benefits in their working hours and work schedule in second place.

Recommendations

Following are the recommendations in addressing the needs of those employees with family status:

1. Literacy rate shall be enhanced so that employment opportunities also get increase.
2. Awareness of the law shall be made on every forum so that every single individual knows about his/her rights.
3. Gender discrimination shall be eradicated on every level.
4. Employment opportunities shall be wider so that earning hands get large in number and dependents become less.
5. There shall be criteria for those employees having family responsibilities in selection, promotion trainings and transfers.
6. Allowances shall be given to employees who have genuine reason on the ground of family status.
7. Over all work criteria is free of both indirect and direct discrimination.
8. Part time or contract basis employees shall be fairly dealt in respect of pensions, pays, and promotions.
9. Not upholding stereotypical approach on the suitability of people who are having family responsibilities for a particular job for instance those having family responsibilities are not suitable for job which involve excessive travelling

Conclusion:

In this developed era where almost every single state adopts new laws for the protection and feasibility of their subjects. Pakistan still is far behind in protecting the rights of its subjects. Discrimination has been condemned by our Prophet (s.a.w) in his last sermon he said

“All mankind descended from Adam and Eve , an Arab is not better than a non-Arab and a non-Arab is no better than Arab , a white person is not better than a black person, nor is black person better than a white person except by piety and good actions.”

We being Islamic Republic of Pakistan shall take constructive steps in eradicating all forms of discrimination and with the evolution of law and time our state stalk holders shall promote and adopt more laws for the protection of its subjects.

In present time, almost everyone is working the rights of workers having family status shall be protected and shall be given equal opportunities to come forward and work alongside with those having no family responsibilities without having this fear in heart and head of losing promotions or benefits just because he is responsible for dependents. If every department start enforcing the laws, Pakistan will rise and shine in almost every field.

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