



Short Article

Genetic Discrimination

Surya Sunilkumar¹

¹*Ramaiah Institute of Legal Studies*

Published on: May 10, 2021

Page No.: 64 – 68

Manuscript No.: 2021/LKLR/10064

Cite as: Surya Sunilkumar, 'Genetic Discrimination' (2021) 1(1) LKO. L. REV. 64

Find here: <https://www.lucknowlawreview.org/surya-sunilkumar>

Copyright © 2021, Lucknow Law Review.

This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

Abstract: *The Constitution of India lays down the basic framework delineating fundamental rights, codes, procedure, duties and responsibilities of state and citizens. Fundamental Rights are the backbone of a democratic nation. Equality is a basic human right that is included in our constitution. Any discrimination will be considered a violation of the Indian Constitution. In the new era of science and technology, genetic discrimination proliferated at full tilt. The significance of this issue was considered in case of law in 2017. In this article, we will discuss what genetic discrimination is and its prevalence in India and other countries.*

Keywords: *Genetic Discrimination, Fundamental Rights*

Introduction

“Injustice anywhere is a threat to justice everywhere.”

- Martin King Luther Jr.

To understand genetic discrimination, it is essential to understand what genes are. A gene is a basic functional and physical unit of hereditary¹. Every individual has two copies of each gene, one inherited from each parent. Most genes are the same in all humans, but less than 1 per cent of the total is slightly different between people. In their sequence of DNA bases, alleles are variants of the same gene with minor variations, because of this, the humans tend to have diseases and other disability if it is seen present in the DNA of the individual's parents. These small distinctions contribute to the distinctive physical characteristics of each individual.

Genetic discrimination is a term used for differential treatment of a person based on his or her genes. The practice of corroborating manifestation of diseases through genes began during the late 19th century. The study of genetics is used for understanding disorders, diagnosing disorders, treating diseases etc. Initially, genetic testing was conducted to detect cancer risks in a family line. Genetic discrimination can also be traced back in the Second World War when the Nazis under the leadership of Adolf Hitler distinguished between desirable and non-desirable genes and caused mass genocide of undesirable ones. Some Nordic countries also followed the practice². Though the revelation of DNA and chromosomes has opened a new path for expeditious growth of technology in the field of genetics it has also caused into discriminating people based on their genetic history. Genetic discrimination is usually seen when an insurance company or an employee discriminate a person if they are detected with some genetic mutation. This causes fear in minds of the people as they might lose opportunities because of mere genetic tests.

¹<https://medlineplus.gov/genetics/understanding/basics/gene/#:~:text=A%20gene%20is%20the%20basic,to%20make%20molecules%20called%20proteins.&text=Alleles%20are%20forms%20of%20the,their%20sequence%20of%20DNA%20bases.>

² <http://www.upsciasexams.com/article-details/51/Genetic%20Discrimination>

Meaning of Genetic Discrimination

In general, genetic discrimination is defined as discriminatory treatment of a person who has or perceived to have a gene mutation that increases surges the risk of inherited disorder or diseases. For example, a person who has been detected with genes with mental health issue may not be allowed to work in a high-pressure job, even though that person won't be having active symptoms of mental illness.

According to U. S legislation's Section 2 finding in Genetic information Non-discriminatory Act 2008) "... Genetic testing can allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment."

Genetic Discrimination in India

The First-ever case that discussed genetic discrimination in India *M/S United India Insurance Company Limited v. Jai Parkash Tayal*³ which was a landmark case. In this case, the petitioner was denied his right to insurance by the defendant stating that genetic diseases are covered under the policy that was given to them. According to the principle laid down in Article 12 of the Convention on Human Rights European Convention on Human Rights & Biomedicine Section 11, Oviedo (1997) European Convention on Human Rights & Biomedicine Section 12, Oviedo (1997) and Biomedicine, predictive genetic tests must not be carried out for insurance purposes. Thus, it supported the claims of the petitioner. The Delhi High Court concluded in the judgment that

- Right to avail health insurance is an integral part of the Right to Healthcare and the Right to Health, as recognized in Article 21 of the Constitution.
- Genetic discrimination is unconstitutional.

³ (RFA 610/2016 & CM Nos.45832/2017) dated 26th February 2018

- It also suggested a proper framework to prevent genetic discrimination.
- Insurance regulatory development authority of India was asked to redefine exclusionary clauses in the insurance policies.

There is a need for proper legislation for genetic discrimination. The law should be made in a way that it maintains confidentiality of genetic data. It is essential to eliminate the idea of being biased to genetically mutated person as it affects them mentally and physically. Common fears that are imbued in minds of people are whether genetic testing will cause them into losing health insurance or losing employment or demotion due to vulnerability to disorder or disease. Thus, proper regulations and laws will help contain fear and also use genetic technology for better purposes.

In Other Countries

- In USA Genetic Information Non-Discrimination Act 2008 (GINA.2008) was enacted to protect against access to genetic data and genetic discrimination in the context of health insurance and employment. Genetic data includes information of individual genetic tests and genetic tests of individual's family members and information of any disorder or disease or condition of an individual's family member. This Act prohibits requesting, requiring, or purchasing of genetic information.
- Canada has adopted the Genetic Information Non- Discrimination Act in 2017. It prohibits any act of genetic discrimination by Insurance companies or job authorities. It has criminalized asking an individual to undergo genetic testing as a condition for the provision of any goods or service and for entering or continuing a contract. Prohibits discrimination in the terms and conditions of employment, including hiring, compensation, employment benefits, advancement, employment training, assignments, and termination of employment. It also limits an employer's right to collect or disclose genetic information. Harassment and retaliation are prohibited under GINA.⁴

⁴ Reference: [https://ca.practicallaw.thomsonreuters.com/1-5018645?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://ca.practicallaw.thomsonreuters.com/1-5018645?transitionType=Default&contextData=(sc.Default)&firstPage=true)

- In Australia Genetic discrimination is prohibited under the Disability Discrimination Act 1992, but there are certain exceptions that are specified in the act. This act differentiates between legal genetic discrimination and illegal genetic discrimination.

Conclusion

As there is a substantial increase in technological advancement in the study of genetics it is necessary to regulate the use of genetic information. India having an ever-growing advancement in the medical technology there is a need to understand the aftermath of the pros and cons of it. Genetics have helped human beings to understand the evolution of Homo-sapiens. It should be used to understand how the human body will evolve and survive in the ever-changing environment. Genetic discrimination being a new age concept needs more awareness to curb exploitation and manipulation of genetic data. Proper legislation regarding the use of genetic information will help to abolish genetic discrimination. Any kind of discrimination is prohibited in the ambit of Article 14 thus we must move forward with the needs of the modern world. Thus, India is in a dire need of legislation against genetic discrimination as the subject is too wide to contain in the Articles of Constitution.