

Gender discrimination and indian act history essay



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Canada, a country that boasts with its democracy, multiculturalism, respect for equality and rights and freedoms, has in its past reflections of a different belief. One that is reminiscent of the inequalities we are used to seeing in undeveloped or developing countries that lack the tenets of democracy. This stark difference in the belief of the Canadian government, compared to what has been done in its early days can be seen as the development and the evolution of democracy and justice in this country. Thus it can be taken as a positive move towards a more just and egalitarian society. However, there are some issues that state otherwise.

In its early period, the Canadian government put forth the Indian Act in order to clearly define its interactions with the Indian bands and people. This act was to control the local self-government of the Aboriginal peoples and set the standards for who gets to be recognized as a status-Indian in the eyes of the Canadian government. However, some provisions in the legislation suggested a more secretive agenda of the government at the time. This was the hope and aim of the eventual assimilation of the Aboriginal people so one day, the national aspirations and hopes of the Aboriginal people would be destroyed by the lack of sense of self, thus becoming fully Canadian, and forgetting about their past. The provision that specifically reflects this desire is Section 12 of the Indian Act. Section 12 (1)(b) outlines that Aboriginal women that married either non-Aboriginal, or non-status Aboriginal men would automatically lose their Aboriginal status, and the rights and exceptions that come with it. However, this is contradictive of both the human rights standards as it is a clear discrimination against women and their choice of marriage, and also contradictive of the matriarchal society of

the Aboriginal people. Aboriginal men may marry whomever they like and do not risk losing their status. To go furthermore, Section 12(1)(b) outlines that the descendants of those women also cannot gain Indian status. Also, Section 12 (2) states that the illegitimate children of Aboriginal women cannot gain status if their father is known to be a non-Aboriginal man, or the Aboriginal agent contests their Aboriginality. The details of the Act and its provisions will be explained in the paper.

This clear discrimination was challenged in court by Sandra Lovelace.

However, when the Canadian courts did not approve of her challenging, she took it to the United Nations, where she won her case thus forcing the Canadian government, through the UN to make amendments to the Indian Act. Bill C-31 was brought in by Parliament to make the necessary amendments to make the Indian Act in line with human rights standards. However, while the Bill seemingly made changes to the discriminatory sections of the Act, it has drawn major critique in the sense that it had actually not changed much, and still continues to discriminate. Those critiques in detail will be outlined in this paper.

While the critiques have not died down, and the dilemma of the Aboriginal women continues, the Canadian government has not taken one step towards actually restoring the equality between Aboriginal men and women. It has not given the rights and freedoms it has guaranteed its other citizens in the Charter and continues to do so. It is in the clearest of understandings that as the Western world continues to improve its standards, rethink its past errors, and make amends to the disadvantaged, the Canadian government will soon be left standing with the erroneous law that is the Indian Act. Before long it

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will once again have to face the result of the growing tensions within the Aboriginal women towards the government. Before such a thing occurs, it is advisable that the government take actual steps to bring equality and justice to the Aboriginal women, just like those enjoyed by other Canadian citizens.

INTRODUCTION

Amongst all of the developed countries of the western hemisphere, Canada holds a special place. There are many distinct features that make Canadian life and government distinct and set it apart from the governments and political lifestyles seen in other western democracies. This is something that may seem like a quite obvious and evident position to take. However, it would be beneficial to understand what grants the Canadians this special and unique spot amongst other Western countries. Since its early days, Canada and Canadians were very distinct and different from the Americans south of the border. This difference was found in many aspects of Canadian life. However, the most important distinction between Canadians and Americans, like the rest of the Western countries, was the fact that Canadians have always shown more willingness, and readiness to observe human rights, peaceful means of achieving ends, and finding common ground and a method of consensus among differing parties. This has happened for such a long time that it has been embedded within Canadian political culture and can be seen reflected in the political atmosphere of today's Canada. It is evident that politics is not as harsh and cruel as what it is in Great Britain or the United States. Canadian politics and political parties are closer to the center of the political spectrum than most parties found in Western democracies. Along with its different political culture, along the way,

Canada acquired some responsibilities that come with this belief. One of these was the strict adherence and belief in human rights, and equalities. The greatest political work that sets Canadian democracy apart from the others is the Canadian Charter of Rights and Freedoms. This unique piece of legislation was a turning point in Canadian politics, and has been regarded as a natural and desired outcome of a well-developed democratic culture.

When we see this unique and different approach to equality and human rights in the political arena in Canada, we cannot help but wonder how some tragic issue came to occur in Canadian history. There are incomprehensible and even embarrassing events that scar the history of the Canadian political culture. Events ranging from the Residential School policy of assimilation in 19th century Canada to the Chinese head tax that was in effect, Canadian political culture is marred by these events that occurred and was followed on by the Canadian government of the time. However, there is one historical event that stands out from the others in terms of significance, relevance to events occurring today. This is the treatment of Aboriginal women in Canada which took place seemingly until 1985, but is visibly going on even today. Until 1985, as if the treatment of the Aboriginal people in general was not enough in Canada, Aboriginal women were being objected to a lesser treatment than Aboriginal men by the government. This brought down even lower, the situation of the Aboriginal life and the livelihood of the community.

Women in Aboriginal Societies

To better understand this complex human rights violation that affected so many Aboriginal women, we must break-down the issue. First we must understand what the gender role of Western women were, and the gender

role of the Aboriginal women, and compare the two to have more understandable and comprehensible results. Once we get a clear sense and understanding of the role of the Aboriginal women in the Aboriginal community, then we can move on to see the inequalities and hardships they faced in terms of treatment compared to men, by the Canadian government. Then, we will initially look at the pre-1985 (Bill C-31) situation of the Aboriginal women, and the discrimination they faced by the Indian Act. Next, we will look at the changes brought on by Bill C-31 and its critiques. After this we shall be able to compare the difference brought on by both situations and come to a conclusion whether Bill C-31 had any actual positive implications for the status of Aboriginal women. This chronological movement of the issue will help to break it down.

The Aboriginal culture and tradition is vastly different than Western culture in many different aspects. In our inquiry we will deal with the difference of the gender role of the women in Aboriginal societies, compared to the gender role of the women in Western societies. This comparison will help to implement a better image and understanding of the differences between the two roles and thus help to better identify what Aboriginal women face, and methods that could be devised to help with their struggle to achieve equality and respect in the eyes of the Canadian government which has systematically discriminated against them for a very long time.

In western societies such as that of Canada, women and their role within the society has been going through drastic changes, which seem to be continuing as generations go by. If a simple comparison is made between the Canadian women that lived during the time of colonization by Britain,

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and the Canadian women of today, stark differences will be found between the two compared. This goes to show that society and the life of its people is a dynamic force, one which eventually goes through change over time. The civil rights movements that started out in the 1950s is a perfect example of how this change occurred for women and other disadvantaged groups of a society. Canadian women in today's society enjoy all of the freedoms that are enjoyed by their male counterparts. This does not mean however, that there is not discrimination against them even today. After all, a Canadian woman earns less than their her male counterpart, doing the same job. Things have improved from before, and women in western societies enjoy a more active role participating in their communities. More and more women are becoming a part of the work force and are no longer house-wives. They are increasingly becoming active in managerial positions and are taking active roles in politics and civil movements. They have equal treatment in the eyes of the government in terms of freedom, justice and equality.

Compared to the examined situation of women in western societies, we shall now take a look at the role of women in Aboriginal societies. Women in Aboriginal societies play an important role in the community. They are seen as the centerpiece of the livelihood of their communities and are respected for their role. 1 While men were responsible for providing food, shelter and clothing, the women were responsible for the domestic happenings and were seen as life-givers and the care-takers of life and were respected tremendously . 2 Seeing this equality and balance in roles, the traditional Aboriginal families had very small rates of break-up. Husbands and wives were expected to respect and honor one another, and to care for one

another with honesty and kindness. 3 Aboriginal men also respected women for the sacred gifts which they believed the Creator had given to them. 4 Comparably, women had central roles in almost all Aboriginal creation legends. In Ojibway and Cree legends, it was a woman who came to earth through a hole in the sky to care for the earth. 5 Many more examples of similar legends can be found within the Aboriginal culture. Examining the central role of the Aboriginal women within their societies, it can be comprehended that their equal and just treatment by the government is vital in the survival of their communities and livelihoods. However, when the Canadian government does give equal opportunities and rights like the men of aboriginal communities receive, the Aboriginal community is slowly broken down and thus the children that are raised in this dysfunctional atmosphere grow up to be unproductive members of society and thus continuing the cycle that will eventually lead to the destruction of the traditional Aboriginal way of life. The oppression of Aboriginal women is of a particular nature as their cultural identities are entangled with legislation. 6 Taking this into consideration, one cannot stop thinking about whether the Canadian government is purposely after the slow annihilation of the Aboriginal sense of identity and being, so as to one day eliminate any people having Aboriginal identity. Even thinking about such a possibility is enough to have fear, as a country that prides itself as having a just and equal government, freedoms entrenched in its constitution and the equal opportunities provided to its citizens no matter their gender, religion, or race.

The Indian Act (Before Bill C-31)

As a means to govern the situation of the First Nations people living within Canada, the Canadian government created the Indian Act in 1876. As stated by the Parliamentary Information and Research Service, the ultimate goal of the Indian act is the assimilation of the Indian population as a whole into Canadian society. 7 This historic statute has been a point of controversy for a long period of time. The act deals with two things in general terms. The first area of governance of the act is the way Aboriginal bands operate. The second area which the act has control and governance over is the definition of who is considered a status Indian in the eyes of the Canadian government, and rules regarding the loss of this status, or the methods to obtain this status. Under this treaty, the Aboriginal communities have the ability to either leave the governing of their bands to the Canadian government or themselves. They have certain limitations as to the extent of their self-governance reaches; however, they are generally free to act within the land given to them by treaties. There is generally no contestation in the part of the Indian act that deals with the method of governance for the bands. The area that has sparked controversy for a long time however, is the area that deals with the criteria used to define a person as a status Indian or not. It has been observed that the Canadian government systematically discriminates against Indian women in restricting their affairs with non-Indian men. This is because the Indian Act, before the amendments were brought in, had presented many instances in which Aboriginal women could lose status. Specifically speaking, Section 12 has been an area of much debate.

Specifically Section 12 (1) (b) created much debate. Here, The Indian Act dictated that Indian women who married non-status men were no longer Indian. ⁸ Going further with the discrimination of women, the section also stated that the descendants of women who married non-Indian men also lost their chance to be registered as status Indians. ⁹ This meant that once an Aboriginal woman married a non-Aboriginal man, one more line of Aboriginal identity had been cut, and thus continually decreasing the population of status-Indians, which enjoy special benefits and rights, and the government has an obligation towards. This section of the Indian act can be seen as an obviously formulated section as the Canadian government knows that the Aboriginal society is generally matriarchal and that it considers the women as the continuer of the blood line. This means that the Canadian government knew that women raised in this culture would assume that their children would be considered an Aboriginal by blood because of themselves, thus setting an obvious obstacle and a possible trap for women to fall into. This creates a big contradiction with the norms of the Aboriginal society and the law that governs them. It is simple political knowledge that laws governing certain groups must be in accordance to their beliefs and customs. Secondly, while Canadian women enjoyed the freedom to marry whomever they liked, without risking the loss of any of their benefits, rights or abilities, the women living in reserves were not enjoying the same standards. This double-standard of treating women cannot be tolerated. Also, if the men had the ability to marry whomever they liked, without losing their status, or the status of their children, the same right should be given to the women of the society if the Canadian government claims to respect freedoms and equalities, and provides it to its other citizens. This clear discrimination

against Aboriginal women continued even further with the implications brought down by Section 12 of the Indian Act. Left in a contradictory situation, Aboriginal women that would like to marry a non-Aboriginal man could not do so without losing their status, so they resorted to having a common-law affair with them.

However, the Canadian government also blocked their ability to pass down their Indian status to their children that were born through a common law relationship. This is because under Section 12(2) “ illegitimate” children also did not have the right to become a status-Indian. This section of the Indian Act specifically and systematically discriminates against the Aboriginal women in a deliberate manner. Another section of the Indian act that deliberately discriminated against Aboriginal women is Section 12 (a), which has clause (iv) known as the “ double mother clause”.¹⁰ This clause provided that a person whose parents married on or after 4 September 1951 and whose mother and paternal grandmother had not been recognized as Indians before their marriages, could be registered at birth, but would lose status and band membership on his or her 21st birthday.¹¹

As problems kept on arising due to the provisions of Section 12 of the Indian act, the Canadian government was slowly being forced to act to put an end to the contestations of status-Indians. In thought, this would mean that the government would simply realize its discriminatory error, and give way to the amendments demanded by the Aboriginal women. However, that was not what the government did. Instead, the Canadian government released what is called “ The White Paper” in 1969, which attempted to put an end to the special status of status-Indians within Canadian politics, and forced to

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incorporate status-Indians into Canadian society, stripping them of their benefits and special rights. This was a turning point in the relations of the government with the Aboriginal people. The pressure of Aboriginal people were now strengthened with the pressure of the rest of the Aboriginal people that saw the government as purposely trying to legislate away their historic rights and freedoms. The government obviously could not go ahead with the plans proposed in the White Paper and did away with their attempts.

Turning Point in The Indian Act

The Canadian government did not seem to give way to any pressures to amend section 12 of the Indian act. However, when Sandra Lovelace took her situation to the United Nations Human Rights Court, and successfully won her case, the Canadian government had to finally make amendments to much debated Indian Act to comply with the human rights standards of the United Nations. ¹² Sandra Lovelace won her case in 1982, and in three years in 1985, Bill C-31 was passed to make amendments to the Indian Act. ¹³ The amendments to the Indian Act were as follows; it seemingly ended the discriminatory sections of the bill, especially those against women. ¹⁴ According to the amendment, a woman who marries an Indian from another band no longer becomes a member of her husband's band automatically, but it is dependant on the approval of the band. Secondly, it changes the meaning of " status" and allows the ability of persons who were denied status before to be able to achieve status according to the provisions of the amendment. Lastly, it gives bands to make changes and modifications to their membership rules. However, this is only valid for bands that did not

give their right to governance to the Canadian government, and still govern themselves.

While the fact that Bill C-31 was passed by the Canadian government to make amendments to the Indian Act can be seen as a positive move towards giving Aboriginals in general and women in specific equality and justice, the bill has actually not changed all that much in the Indian Act. It has managed to incorporate the outspoken attempt to eventually assimilate the First Nation people.

Critiques of Bill C-31

The Indian Act has been used as a tool by the federal government to limit who is and who is not an Indian. ¹⁵ While the Bill did make some amends, there are many criticisms towards it. As it stands, there are four main erroneous points in the bill. The bill does not give any option to reacquire Indian status to those that lost it due to the 1951 cutoff date. Specifically speaking, grandchildren born on or before September 4, 1951 do not have the ability to acquire their Indian status. ¹⁶ However, the discriminatory section here is that this does not apply to the Indian men that married out. This is clearly a section that must be dealt with, as it is a clear discriminatory act towards women. Secondly, the amendments brought on by Bill C-31 do not show any regard to the children born from common-law situations. The government does not grant any ability to the children born from these relations to acquire Indian Status, when it was the Indian Act that forced women to have such a relationship. Third, and possibly one of the most obviously discriminatory section is the fact that the amendments of 1985 allow the “ illegitimate” male children of male Indians to acquire status, but <https://assignbuster.com/gender-discrimination-and-indian-act-history-essay/>

not the female “ illegitimate” children of male Indians. This is an outrageously discriminatory section against women and must be removed immediately. This is something that is enough to cause a family to have difficult time understanding and explaining to their daughter who will not receive status. One cannot stop from asking whether the Canadian government is purposely trying to create contradictions within Indian families to break up the family life of the Aboriginal people. Lastly, the amendments in Bill C-31 give unequal treatment to the grandchildren of Indian women who married out in that it will only grant them Section 6(2) status, which is lower than a section 6(1) status. This means that those children will not be able to pass down their status to their children unless they marry another status Indian. This once again puts a hurdle in front of those born prior to 1985.

Comparison to the Charter of Rights and Freedoms and the Constitution

To better understand the dilemma of the Aboriginal people and specifically women we must take a look at the Indian Act, and the subsequent amendments to it through Bill C-31, and whether they are really in line with human rights standards, or are they the continuation of the methods of the Canadian government to assimilate the Indian people. To do this, we can simply compare the provisions of the Indian Act to the rights of Canadian citizens, entrenched within the Constitution under the Canadian Charter of Rights and Freedoms. The Charter gives light to the many issues and debates around the treatment of Canadian citizens by the government. Now, it is assumed by many that a government that gives so much importance to

the rights and freedoms enjoyed by its people would not discriminate on which citizens would enjoy these rights. However, this is not the case in Canadian politics and reality. It is the sad truth that while ordinary Canadians are able to enjoy the freedoms given to them by the Charter, Aboriginal Canadians are still engulfed by the discriminatory provisions of the Indian Act.

Conclusion

The Canadian government boasts of its commitment to human rights, justice, equality and freedom in the international arena. It spends a great deal of money in the army's mission in Afghanistan to bring peace and freedom to the Afghan people. However, what the Canadian government fails to do is to see the dilemma of some of its own citizens. The disadvantaged citizens that are the Aboriginals of Canada have been suffering diplomatically in the Canadian governments hand for a long time. However, the unequal treatment of the Aboriginal people is almost exclusively directed toward Aboriginal women. While Aboriginal men don't have any of their freedoms and rights restricted, this is not the case for Aboriginal women. The main piece of legislation that governs the interaction of the Canadian government with the Aboriginal peoples is the Indian Act. However, this important piece of legislation has many erroneous sections with clearly discriminate based on gender. While parts of such legislation could be unthinkable for the rest of the citizens of Canada, especially women, Aboriginal women have had to deal with this for an extended period of time. Specifically speaking, Section 12(1)(b) of the Indian Act stated that an Aboriginal women would lose her status as an Indian if she married a non-

Indian man. 17 This is contradictory obviously a restriction of a woman's freedom to choose her partner. Also, since the same treatment is not applied to Aboriginal men, it is clearly discrimination based on gender. The bill goes on to discriminate more, stating in Section 12(2) that an "illegitimate" child of an Aboriginal woman would also not have any status if the father was known to be white. 18

The Canadian government had no intention of changing this legislation until it was forced to do so when Sandra Lovelace took her case to the UN Human Rights Court when it was not approved by Canadian courts. Lovelace won her case in the UN courts and successfully forced the Canadian government to make amendments to the Indian Act. Thus, Bill C-31 was passed making some amendments to the Indian Act, seemingly removing the discriminatory sections. However, new sections were introduced which were secretly accomplishing almost the same tasks as before. Criticism for Bill C-31 has been many, and seems like it will only increase and rightfully so. How can one take a look at the Act and not say "The goal of the Indian Act was one of assimilation and the arduous task of civilizing the savages". 19 If the Canadian government wants to uphold its status amongst Western democracies as being a firm believer in a just and egalitarian society, it must do what is necessary to be in line with that spoken status. If it is able to pride itself as having something such as the Charter of Rights and Freedoms entrenched in its constitution, it must do what is necessary to extend the implications of this charter to the Aboriginal people, specifically women as well. What is wanted is not something superficial or farfetched, instead, the

proposed change for the Aboriginal women is within reach, only if the government shows the will and desire to go on with it.