

Offences against Scheduled Castes and Scheduled Tribes

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Abstract

The Constitution of India guarantees equality before law and equal protection within the territory of India. It further prohibits discrimination on the basis of sex, caste, religion or place of birth. Equal opportunity in public employment (Article 16), abolition of untouchability, right to life and personal liberty are also guaranteed in the Constitution. In addition, Civil Rights Act 1955, Labour Regulations 1993, and Children's Act 1992 also guarantee the right to equality. The Government, recognizing the historical disadvantage and vulnerability of the Dalits, has adopted several measures to address their concerns. A crime against the Scheduled Castes also known as Dalits is committed in every 20 min. The report stated that a total of 26,127 cases against Scheduled Castes were reported in 2005 while the number of crimes against Dalits in 2004 was 26,887. The cases include 8,497 cases reported under the Protection of Civil Rights Act and 291 cases under the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act.

Keywords: Constitution, Scheduled Caste, Scheduled Tribe, Discrimination, Right to equality, Untouchability, Vulnerability

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INTRODUCTION

The concept of human rights can be traced to the natural law philosopher, such as, Locke and Rousseau who philosophized over such inherent human rights and sought to preserve these rights by propounding the theory of social "compact" [1].

The concept of human rights protects individuals against the excesses of the State. The concept of human rights represents an attempt to protect the individual from oppression and injustice. In modern times, it is widely accepted that the right to liberty is the very essence of a free society and it must be safeguarded at all times so as to guarantee certain rights.

Entrenchment means that the guaranteed rights cannot be taken away by an ordinary law. A law curtailing or infringing an entrenched right would be declared to be unconstitutional. As the Supreme Court has observed [2], the purpose of enumerating fundamental rights in the Constitution "is to safeguard the basic human rights from the vicissitudes of political controversy and to place them beyond the reach of the political parties who, by virtue of their

majority, may come from the government at the centre or in the State".

In the earlier period when the Scheduled Caste/Scheduled Tribes were treated as DALITS and UNTOUCHABLES (Ahhut); they were never given proper representation, they were not allowed to enter certain premises, they were not allowed to attend public meetings, they were not allowed to accumulate wealth, nor they were given proper education; doing all these was made punishable under the 'chaturvarniya' caste system. They were denied the use of public wells and they were illiterate, ill-treated and untouchables for all public services including police and military forces.

After 70 years of independence also, we can easily observe that the condition of these people has not improved; they are still not given proper representation, not properly educated (in elite institutions) and they have a disadvantage in all respects.

The Constitution of India guarantees equality before law and equal protection within the territory of India. It further prohibits

discrimination on the basis of sex, caste, religion or place of birth. Equal opportunity in public employment (Article 16), abolition of untouchability, right to life and personal liberty are also guaranteed in the Constitution. In addition, Civil Rights Act 1955, Labour Regulations 1993, and Children's Act 1992 also guarantee the right to equality. The Government, recognizing the historical disadvantage and vulnerability of the Dalits, has adopted several measures to address their concerns.

The Government has passed two legislations namely *The Protection of Civil Rights Act* (PCRA), 1955 and *The Prevention of Atrocities against Scheduled Caste/Tribe Act*, 1989 so as to enable the Dalits to enjoy human rights on par with other sections of Indian society and empower them in their struggle for their rights and on the other hand, untouchability has been prohibited in the Constitution (Article 17) and is made an offence under the Protection of Civil Rights Act, 1955.

But despite of these, special measures have been adopted to address the problem of segregation, isolation and untouchability, Dalits do not enjoy equal access and enjoyment to many of the rights and still the cases of crimes, discrimination and atrocities against the Dalits continue to exist.

CAUSES OF CRIMES AGAINST SCs/STs

A crime against the Scheduled Castes also known as Dalits is committed in every 20 min [3]. The report stated that a total of 26,127 cases against Scheduled Castes were reported in 2005 while the number of crimes [4] against Dalits in 2004 was 26,887. The cases include 8,497 cases reported under the Protection of Civil Rights Act and 291 cases under the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act [5]. The conflicts/atrocities between the scheduled castes and non-scheduled castes are taking place on certain basic issues like: -

1. Removal of dead cattle, use of public places, abusing by caste names, damages to caste leader statues and paying respect to people of superior castes.
2. An atrocity arises from the Dalit's assertion of self-respect. Their expectation and demand to be treated as equals at the individual, social and political level, irrespective of their economic position.
3. Many of the atrocity cases arise from agricultural wage issues, for the statutory minimum wages.
4. In the villages where there is an acute shortage of drinking water, Dalit communities depend on village's common wells, which were deprived hitherto.
5. The disputes and conflicts arising from land is one of the main causes of atrocities and cases of atrocity occur for various other reasons.

THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

This Act is considered to be one of the most powerful pieces of legislation of its kind. But its implementation is unsatisfactory. Instances of the police refusing to register cases or even to accept complaints are widespread, refuse to take action and often, the police take advantage of the victims' ignorance and file cases other than the Act [6] of 1989. Unless the government enforces the laws for protection of the rights of the Dalits, the proposal for arming the Dalits is just another cruel joke.

Constitutional Mechanism for Upliftment of Scheduled Castes, and Scheduled Tribes

The framers of the Indian Constitution have showed the motive by laying down the provision for the upliftment of the Scheduled Castes, Scheduled Tribes and Other Backward Classes. Thus, for the achievement of this goal the Constitution provides various articles which are enumerated as follows:

1. Article 17 abolishes untouchability.
2. Article 46 requires the State 'to promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes and to protect them from social injustice and all forms of exploitation.
3. Article 335 provides that the claims of the members of the Scheduled Castes and the

Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.

4. Article 15(4) refers to the special provisions for their advancement.
5. Article 16(4A) speaks of “reservation in matters of promotion to any class or classes of posts in the services under the State in favour of SCs/STs, which are not adequately represented in the services under the State”.
6. Article 338 provides for a National Commission for the Scheduled Castes and Scheduled Tribes with duties to investigate and monitor all matters relating to safeguards provided for them, to inquire into specific complaints and to participate and advise on the planning process of their socio-economic development etc.
7. Article 330 and Article 332 of the Constitution respectively provide for reservation of seats in favour of the Scheduled Castes and the Scheduled Tribes in the House of the People and in the legislative assemblies of the States.
8. Under Part IX relating to the Panchayats and Part IXA of the Constitution relating to the Municipalities, reservation for Scheduled Castes and Scheduled Tribes in local bodies has been envisaged and provided. Part IX and Part IXA of the Constitution, respectively permit the legislature of a State to make provision for reservation of seats in Panchayats and Municipalities in favour of backward classes of citizens.
9. Article 340 [7] of the Constitution provides for appointment of a Commission to investigate the conditions of backward classes.
10. Article 16(4) and 16(4A), respectively permit reservation of appointments or posts and in matters of promotion in favour of backward classes not adequately represented in the services under the State.
11. Article 15(4) permits the State to make special provision for the advancement of any socially and educationally backward classes of citizen. In addition to these, there are also other Constitutional

provisions for the welfare and socio-economic empowerment of the Scheduled Caste, the Scheduled Tribes and other backward classes.

Recognizing the relative socio-economic backwardness of SC/ST sections of the society, the Constitution of India guarantees equality before the law [8] and enjoins the State to make special provisions for the advancement of socially and educationally backward classes or for SC/ ST [9]. It also empowers the State to make provisions for reservation in appointments, posts and promotions in favour of backward class citizens [10]. The Constitution of India states categorically that untouchability is abolished and its practice in any form is forbidden [11]. Further, it enjoins the State to promote, with special care, the educational and economic interests of the weaker sections of the people and, in particular, of SCs/STs and promises to protect them from social injustice and all forms of exploitation [12]. Reservation of seats for SC/ST in the democratic institutions [13] and in services [14] is another special measure in favour of these groups. It empowers the State to appoint a Commission to investigate into the conditions of socially and educationally backward classes [15] and to specify the castes to be deemed as SC and ST (Article 341 and 342, respectively). It promises grants-in-aid for promoting the welfare of the STs and for raising the level of administration of the scheduled areas [16].

The Constitution adopts certain safeguards to recognize the rights of the minorities in conserving their culture and establishing and administering educational institutions of their choice under Articles 29 and 30 of the Constitution. While Article 350(A) advocates instructions in the mother tongue at the primary stage of education to children belonging to Linguistic Minorities, Article 350(B) provides for a Special Officer to safeguard the interests of the Linguistic Minorities.

As education plays a major role in improving the status of these sections many special measures have been adopted to enable SC and ST students to pursue education.

ART. 17 AND PROTECTION OF CIVIL RIGHTS ACT

Article 17 of the Indian Constitution deals with abolition of untouchability. It is a fundamental right, and this right is guaranteed against disability arising out of untouchability. This right is guaranteed against State as well as private individuals. This is because the right available under Art.17 is a Statutory right [17].

There are two things mentioned under Art.17:

- 1) **Abolition of Untouchability:** When this provision of Article 17 was inserted in the Constitution of India, Dr. Ambedkar said, 'It was the finest moment of my life, when declaration was made in the Constitution that Untouchability is abolished.
- 2) **Enforcement of remedy/right against untouchability arising out of it:** If any person tries to enforce the disability arising out of the disability due to untouchability, he is committing an Offence.

The authority to make any law punishing an act under this provision is the Parliament by virtue of Art.35 (ii) of the Constitution of India [18].

The term 'untouchability' as stated under Art.17 must be understood and interpreted in special sense i.e., in Sociological and Historical sense (arising out of Caste).

Prior to S.17 there were certain laws which are existing in British and there were 21 such laws in and are still in force by virtue of Art.35 (b) of the Constitution of India, some of these legislations are: 1) Madras removal of Civil Disabilities Act, 1938, 2) Madras Temple Entry Act, 1939, 3) U.P. Removal of Social Disabilities Act, 1947, 4) West Bengal Hindu Social Disabilities Removal Act, 1948 and 5) Bihar Harijan removal of Caste Disabilities Act, 1949.

All these are repealed by the Act of 1955 only to extent of contradiction. In *State of U.P. v. Banvari*, (1951) the lower court punished a dhobi, who refused to wash the Cloths of a Chamar. So, he was punished under the U.P. Removal of Social Disabilities Act, 1947. This was questioned before the Hon'ble Allahabad

High Court. The Allahabad High Court held that Art.17 of the Constitution of India does not render that law invalid as it is only an enabling provision.

In *State of U.P. v. Gulab Singh*, (1954) A Hindu was punished for compelling a Schedule Caste bridegroom to come out from a Palki. The Allahabad High Court held that since the Act of 1947 is still valid, therefore crime can be punished even after coming of Art.17 of the Constitution.

The Untouchability Offences Act, 1955 was amended in 1976 and was renamed as Protection of Civil Rights Act, 1955. This Act was amended to remove some of the loopholes which were there in the Untouchability Offences Act.

In *Devarajiah v. B. Padmanna*, (1958), case was brought before the Supreme Court and the Hon'ble Court was asked to state who were 'Untouchables'. The Court held that (a) The word has to be interpreted in sociological sense as historically developed, (b) Associated by Birth, (c) Related to Caste, and (d) Untouchability does not merely mean an avoidance by touch. It means avoidance by two ways i.e., firstly by Invidious treatment – Given to a person for his birth or his association with a group of untouchables, and secondly any practice of avoidance of dress code, ornaments, ritual traditions, public facility, etc. It further stated that 'arising out of untouchability in any form' must be interpreted very widely.

In *State of M.P. v. Karan Chand*, (1958), Jains did not allow a non-Jain Hindu in a place of worship. The Hon'ble Supreme Court stated that it is not untouchability as it is not related to Caste.

In *State of Kerala v. Venkateshwara Pradul*, (1961) the question was (i) whether Prevention of entering and worshiping in a place of public worship is violative of untouchability Offences Act. (ii) Whether not allowing a person to do an act, done by others, is an offence under the Act.

It was an argument advanced that whether “ownership test” or “use test” is to be applied. The Hon’ble Kerala High Court held that “use test” is the proper test i.e., if you are using it for public, you cannot prohibit. But it must be only on the grounds of untouchability.

Section 3 of the Protection of Civil Rights Act deals with meaning of Atrocity. Under Section 4 there is a punishment for neglect of duties by the public servant. Section 5 enhances the punishment for subsequent conviction.

In *State of Kerala v. Appa Balu Ingale*, (1993) the Hon’ble Supreme Court stated that Evil prohibited under the Protection of Civil Rights Act is not found in *mens rea*. Court must be guided by psychology and there must be adequacy of evidence.

NATIONAL HUMAN RIGHTS COMMISSION

National Human Rights Commission or, NHRC has been set up as a statutory body under the protection of Human Rights Act, 1993. The very purpose of setting up the Commission is to strengthen the machinery for more effective enforcement of Fundamental Rights of the people. The Act provides for the establishment of the National Human Rights Commission at the central level, the State Human Rights Commissions in the States and the Human Rights Courts for the better protection of human rights and for matters connected therewith or incidental thereto [19]. The NHRC is discharging the various functions assigned to it, except for the function relating to inquiry into complaints of violation of human rights [20].

In S. 12(a), the expression human rights have been used. S. 2(b) of the Act defines ‘human rights’ to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution, embodied in the International Conventions and enforceable by courts in India.” Thus, the rights guaranteed by International Conventions to which India has acceded have been included within the term “human rights”.

STATE HUMAN RIGHTS COMMISSION

The Act also makes provisions [S. 21] for the State Governments to constitute similar

commissions in the States. Most of the provisions applicable to the National Commission also apply to the State Commission. A state commission may inquire into violation of human rights for speedy trial of offences arising out of violations of human rights.

CONCLUSION

These Judicial Declarations have created great awareness among people about these rights, they have not made the people complaisant, rather they have increased their struggle to achieve those rights. It also testifies that the Indian courts have become the courts of the poor and the downtrodden. Various decisions reflect that Indian courts are deeply sensitised to the need of doing justice to large masses of the people to whom justice had been denied by the society for generations [21]. There is a long course before the Indian judiciary to be followed in order to achieve the goal of social justice. It can be concluded optimistically that the Indian judiciary would continue protecting the interests of the oppressed, exploited and demoralized people so that a healthy democracy could blossom both in the outer and the inner world equally.

Special emphasis has to be placed on securing the rights of Dalits and Adivasis by paying careful attention to the complaints that it received alleging acts of discrimination, “untouchability”, violence against the human person, atrocities of various kinds, and high-handedness by public servants and others.

Though the Protection of Civil Rights Act and the Prevention of Atrocities Act are provided with strong teeth, they suffer from failure of proper enforcement. The present Implementation machinery should be modified and the operation of the Acts should be brought under a separate pyramidal hierarchy similar to that of the regular police department for enforcing these Acts, comprising men and women of proven rectitude. These cells should also be provided with proper enforcement machinery.

- Dalits are discriminated against, denied access to land, forced to work in slave-like conditions, and routinely abused, even killed, at the hands of the police and of

higher-caste groups that enjoy the state's protection. There should be legislative enactments to abolish caste-based discrimination, caste-related practices of untouchability, bonded labor, manual scavenging, and the devadasi system.

- Caste-based and similar discrimination against marginalized populations must be explicitly addressed.
- Dalits and other populations in similar situations should be explicitly acknowledged as groups of people who have been subject to perennial and persistent forms of discrimination and abuse on the basis of their descent.

Article 17 of the Indian Constitution safeguards the right against untouchability. The members of Schedule Caste and Schedule Tribe are neglected and exploited on the basis of their castes even today. The members of these groups have been exploited for centuries, so, to provide protection to the rights of these people, Article 17 has been put up in the Indian Constitution.

The state is bound to protect the life and liberty of every human being, be he a citizen or otherwise. NHRC acts as a watchdog to protect human rights. It is expected to play an active role in ending violations of human rights. The most important feature of the Commission is to independently probe cases of violations of human rights. The commission can act *suo motu* without waiting for any formal application if any violation of human right comes to its notice. The term "human rights" has been broadly defined and commission is expected to play an active role in ending violations of human rights.

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Cite this Article

Jayant Minj, Offences against Scheduled castes and Scheduled tribes. *Journal of Human Rights Law and Practice*. 2018; 1(1): 12–17p.