

## **IMPACT OF LAWS ON THE ABOLITION OF UNTOUCHABILITY IN INDIA: A CRITICAL STUDY**

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### **INTRODUCTION:**

Untouchability is a Unique Hindu social institution which emerged in the remote .past. The so called untouchables have been suffering the stigma of untouchability followed by servitude, illiteracy and grinding poverty. Due to its serious adverse effects on the Indian society in general and the untouchables in particular, it has been vehemently opposed by many sensible person including saints social reformers and political leaders in the past. The founding fathers of the constitution of India provided for abolition of untouchability in the Constitution which came into force on 26<sup>th</sup> January 1950. It is stated categorically in the constitution under Article 17, that Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. In consonance with this provision , the Parliament , empowered under Article 35 of the Constitution has passed The Protection of Civil Rights Act 1955” and it has been in implementation since then.

### **THE PROBLEM:**

Although untouchability is legally abolished, it is prevailing more or less, throughout the country. This is a fact which needs no corroboration. Of course, any social behaviour requires some authentic sanction either in law or religion or valid custom of a given society for its prevalence. But the institution of Untouchability is almost without any sanction whatsoever. The

Constitution of India has not only abolished and forbidden the practice of untouchability but it has also made it an ‘offence’ punishable by law.

Previously, it was given to understand that untouchability had religious sanction. Several saints and social reformers have repeatedly tried to obliterate this wrong notion or misunderstanding from the minds of the Hindu people, but in vain. Even now also some religious authorities and social reformers are interpreting the religious texts so as to remove the ‘misconceived’ belief for the people regarding its religious sanction. Thus it has lost its religious sanction. So far as its customary sanction is concerned it has lost that too.

Moreover, the institution of untouchability is neither beneficial to the untouchables nor to the caste Hindu materially or otherwise. This inhuman practice of untouchability had deprived them of all the fundamental rights and reduced them to mere chattels. Even the cast Hindus also, were not benefited by the institution of untouchability. A considerable number of so called untouchables converted to Muslim, Sikh, Christianity and Buddhist religion due to the apathetic and inhuman attitude of the caste Hindu towards them. This caused a great loss to the strength of the Hindus. Mahatma Gandhi who realized the danger of untouchability has rightly said that “untouchability is a curse that is eating into the vitals of Hinduism, and I often feel that unless we take due precaution and remove this from our midst, Hinduism itself is in the danger of destruction. Moreover it is an obstacle in the national unity, emotional integration and socio-economic development”. Thus, inspite of all these disadvantages, the practice of untouchability is prevailing in our country. This naturally gives rise to the problem. Why the ‘practice of untouchability is still prevailing in our country even though there is a positive law, prohibiting and punishing its practice? Why the relevant law could not fulfill its expected role? Is it because of improper, partial and defective implementation of the law, or because of the implementation of inadequate, ambiguous and defective law itself, or because of both. Whether there is any substantial and final solution to this problem ? This is the question which forms the basis of the present paper.

## **OBJECTIVES OF THE PAPER:**

The broad objectives of the paper are as follows-

1. It is necessary to know the nature and scope of the law which has been in implementation for the abolition of untouchability and the Protection of civil rights accruing to the so called untouchables by reason of abolition of untouchability. Therefore, it is desirable to take stock of the existing law aimed at the removal of untouchability before proceeding to inquire into the implementation of the said law. It is also desirable to inquire whether there are any inadequacies, ambiguities and defects inherent in the law itself.
2. Law implementing machinery, obviously involves the administration, Police and Judiciary. Hence it is desired to know the organizational set up and the process of law implementation at the Administrative , Police and Judicial levels so as to know the organizational and procedural lacuna, if any , with any one of them or all of them. Further it is desired to go into the details of the working of the law implementing machinery so as to know the role played by the legislation and the law implementing machinery in the removal of untouchability.
3. It is the object of the criminal justice system to apprehend the criminals by awarding appropriate punishment so as to root out the criminal attitude in the society, that too as expeditiously as possible. However, the increasing trend of crimes gives rise to a doubt whether the offenders are being duly prosecuted and punished or they go unpunished or the matter remains pending at the appropriate levels. If they are punished, whether the punishment to which the convict is subjected is equal to the quantum of punishment provided in the Act? If they are acquitted, what are the causes of acquittal.
4. The co-ordination of the political will and administrative will is a pre-condition of the proper implementation of the law concerned. Therefore it is desired to find out whether or not there is proper co-ordination and co-operation between the Central Government and the State Governments so far as the implementation of the law in question is concerned and if it is so to what extent.

5. The Constitution had provided for the Commissioner for SC and ST and after the Amendment in 1990 , it now provides for the National commission for SC and ST to investigate into all matters relating to the safeguards provided for the SC and St under the Constitution and report to the President upon the working of these safeguards at such intervals as the President may direct. It is desirable to know whether the Commissioner for SC and ST has been performing his expected role under the Constitution? Further , it is also desirable to know as to what special measures have been taken for the evaluation of the policy of eradication of untouchability and what was their contribution in this respect.
6. It is desired not to find out mere facts, but to suggest certain remedies in the light of those facts which will be useful in securing expeditious implementation of the law in question.

### **SIGNIFICANCE OF THE STUDY:**

Undoubtedly , law is an effective instrument of change in a given society but it has miserably failed in India in accomplishing its object. Therefore it is necessary to find out as to why the legal remedy could not be successful in eradication of the problem of untouchability. It appears that something is lacking in our jurisprudence. What is that ‘something’ which lacks in our jurisprudence? Why the present law could not create necessary apprehension in the minds of the caste Hindus that the enforcement of untouchability would result in serious legal consequences? Whether the fault lies either in law or in the modus operandi of the law enforcement agencies? The present paper is a modest attempt to answer these questions in the light of relevant facts.

### **LITERATURE REVIEW:**

Various writers and jurists have attempted to find out the answers to the above questions and they have come out with various answers and solutions. Bhardwaj. S .N in his book “problems of Scheduled Castes and Scheduled tribes in India, 1979, Light and life publishers, New Delhi had raised the issues and showed the seriousness of the problem of untouchability in India.

Also Ghosh. S.K in his book titled “Protection of Minorities and Scheduled castes” , Ashish publishing House, New Delhi has dealt with the subject in detail and provided some solutions.

### **RESEARCH METHODOLOGY:**

The present study is based on the relevant information and secondary data available in the contributions made by various authorities on the subject, Reports of the Commissioner for Scheduled castes and Scheduled Tribes, Reports of national commission for Scheduled castes and Scheduled tribes , several law and journals. It is also based on relevant information and data from the surveys conducted for this purpose and personal discussion with some important administrators, police officers, learned judges and Advocates and obtaining informations through questionnaires.

### **FINDINGS:**

1. Law is undoubtedly, a powerful weapon to bring about social change in a given society, but unless it is flawless and its implementation is free from bias, its purpose cannot be accomplished. The present study reveals that both, the laws aimed to abolish untouchability, for example The Protection of Civil Rights Act 1955 and The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act) 1989, as well as there implementation are not free from certain defects.

The Protection of Civil Rights Act 1955 attempts to root out untouchability and restore the civil rights of the victims of untouchability in the public life leaving private one untouched.

A great majority of offences are registered under section 7 (1) (d) of the PCR Act 1955 but most of the accused are acquitted because the Scheduled Castes converts to Christianity are not beneficiaries under the said section. Many of the scheduled Castes have converted to Christianity in order to erase the stain of untouchability.

The provision of ‘summary trial’ under section 15(1) of the PCR Act 1955 , if applied incapacitates the Magistrates in awarding maximum punishment under the Act.

It seems that the punishment provided under the Act is inadequate to deter the prospective offenders.

With respect to the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, the present study has shown that a large number of cases have been characterized by delay in visits to the scene of crime and tardy investigation, lukewarm prosecution, protracted proceedings and high percentage of acquittals

2. The Ministry of Home affairs is the nodal ministry of overall policy planning and monitoring co-ordination and evaluation in respect of amelioration of the socio-economic condition of the so-called untouchables. It seems that presently it is showing a deeper concern with the problems of the untouchables than that it was doing previously. However, it could not fully secure the sincere and expeditious implementation of the law in question and policies or programmes for the improvement of socio-economic condition of the so called untouchables from the State governments and their concerned officials.
3. Of course the financial allocation made so far under each plan was inadequate as compared to the magnitude of the problem of poverty stricken untouchables. Besides, the laws, policies or programmes meant for the improvement of their socio-economic conditions could not reach to the people because many of them had no knowledge of the same due to illiteracy and poor propagation system.
4. The present precarious socio-economic condition of the so-called untouchables indicates that the Central and State Governments and their respective laws enforcement machinery at the administrative level lack firm determination to take necessary stringent action for the amelioration of the socio-economic condition of the so-called untouchables.
5. The Police Departments of the respective State Governments and Union Territories , especially at the lower level seems to be apathetic towards the problems of the so-called untouchables. Ofcourse, it cannot be attributable to the caste character of the Police Department,

but it is fact that a majority of the high caste officers cannot realize the magnitude of their problems. Although the number of cases registered with Police under the Protection of Civil Rights Act 1955 seems to be sizeable one, they are very meagre as compared to the vast community which is susceptible to untouchability. In most of the cases arrest is not made and even if it is made, the arrested persons are released on bail immediately. Numerically more acquittals of the offenders in the courts and pendency of cases for investigation indicates the inefficiency and indifferent attitude of the police personnel in this respect.

6. Law and Judiciary are the fountain of justice and nothing but justice. However, numerically more acquittal, pendency of the cases in the courts, awarding less deterrent punishment to the convicts and some of the unwanted interpretations given by the honourable judges exemplifies an indifferent and technicalities oriented attitude of the judges in this respect. It seems that the judiciary could not fully realize the fact that the so called untouchables generally fail to wage a successful legal battle because the caste Hindus take undue benefit of the socio-economic situation in which they live today. Ofcourse , the poor prosecution, ignorance of law and lack of legal aid on the part of the victims of untouchability result in failure of cases in the courts.
7. The State Governments are somewhat reluctant to adopt the special measures under the Act or directives of the Central Government for the eradication of untouchability, even when central government is ready to provide financial assistance for all the centrally sponsored schemes in this respect. Even if some measures have been adopted, they are being implemented half-heartedly. There seems to be minimum co-operation from the State Governments to Central Government so far as eradication of untouchability is concerned. Therefore process of implementation of the Protection of Civil Rights Act 1955 is inordinately slow and ineffective.
8. The present study reveals that social, economical and educational backwardness of the Scheduled Castes have played an important role in perpetuating the evil of untouchability.

## **SUGGESTIONS:**

1. One of the major obstacles in the implementation of the Protection of Civil Rights Act 1955 is the lack of statutory definition of the offence of untouchability. Therefore it should be defined connotatively as well as denotatively, which may cover the overt as well as covert manifestation of the offence, so as to avoid possible confusion as to commission of an offence.
2. There are certain ambiguities or flaws in the Protection of Civil rights Act 1995. The PCR Act attempts to root out untouchability and restore the civil rights of the victims of untouchability in the public life leaving the private one untouched. The public places like well, temple, hospital , shops, streets etc, are covered by the Act but the private places like house and private premises , including well or tap , temple or place of worship are not covered by the Act.

When Untouchability is a ‘crime’ it is immaterial where it is committed. A crime is a crime whether it is committed at a public place or at a private place. Hence any discrimination on the ground of untouchability even at the private places should be covered by the penal code. However it does not mean that all the private places should be open to the untouchables , but it means any discrimination on the ground of untouchability at such places should be legally abolished.

3. It is submitted that Section 7(1) (d) of PCR Act needs suitable amendment so as to cover the Scheduled Castes convert or Christianity by that section. A great majority of offences are registered under this section, but most of the accused are acquitted because the scheduled castes converts are not beneficiaries under the said section. When the accused proves that the complainant does not belong to scheduled caste by reason of his conversion to Christianity the case fails.
4. Teaching of the PCR Act 1955 at L.L.B level is essential to improve the level of knowledge in this area of law. It is submitted that all the



Universities imparting legal education should include PCRA Act 1955 in their respective syllabus of the L.L.B.

5. In order to achieve the purpose underlying Article 17 of the Constitution it is necessary to adopt some positive measures for the economic and educational development of the Scheduled castes in addition to punitive measures.
6. The problem of removal of untouchability should be treated also as a matter of social reform along with the administrative and legal measures. The feeling of brotherhood must be generated in the minds of different communities for breaking the vicious circle of casteism. Inter-caste marriages could be one of the solutions which can be offered to abolish the caste system completely. The younger generation should be encouraged by the government by way of employment opportunities to those who go in for inter-caste marriages.
7. The provisions for additional facilities like separate schools, crafts, training centres, housing colonies and the like will not by themselves serve to eradicate the evil of untouchability. In the first place this approach will encourage segregation, isolate the scheduled castes and thereby perpetuate the evil of untouchability. Segregation perpetuates inferiority and therefore separate arrangements can never inspire assimilation and integration. Desegregation must be at all levels-residential, teaching, preparing for competition, etc. Even the reservation of seats for the Scheduled Castes in the Legislatures and various governments services after the purpose of reservation has been achieved may prove harmful from a broader point of view, since it will perpetuate more or less, the existence of the so called depressed classes.
8. The laws which have been enacted for the removal of untouchability, are used to disturb social peace. The laws that should help in creating social peace are pursued in wrong spirit to destroy the peace and harmony. This is solely because the society is uneducated, backward and illiterate. Petty desires dominate the minds of the mischief mongers in the rural areas. They misuse the backward and downtrodden people for some selfish aims, gains and power politics.

The Scheduled Caste people also become a 'willing' prey in the hands of such mischief mongers. This can be changed by spread of literacy among the large population of Scheduled Castes. Political awareness, employment opportunities and status of equality and dignity can slowly change the whole situation.

9. With respect to the Scheduled Castes and Scheduled Tribes(Prevention of Atrocities) Act 1989, the present study has shown that a large number of cases have been characterized by delay in visits to the scene of crime and tardy investigation, lukewarm prosecution, protracted proceedings and high percentage of acquittals. What is needed in this regard is widespread publicity of the Act through all the media highlighting the offences and punishments covered by the Act.
10. An enactment in the English language will not be understood by the common man specially Scheduled Castes in the rural areas. Translation into Hindi and regional languages should be speeded up.
11. Orientation training in the provisions of the Act should be arranged for Magistrates, Prosecutors and Police. Seminars should be arranged in which the objectives of the PCR Act and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 should be fully discussed.

## **CONCLUSION:**

Whether the matter of abolition of Untouchability should be left to the agents of social change like education, modernization, industrialization, democratization etc? It will not be useful to rely entirely on the agents of social change as they are considerably slow in bringing about desired social change in the society. Of all the remedies of eradication of untouchability, law is more effective. Therefore, the law for its abolition ought to be free from defects and it should be implemented sincerely and expeditiously so as to achieve the goal of social equality.

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