



AN EVIL IN NEED OF BROADER VIEW

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ABSTRACT:

This paper primarily deals with untouchability as a whole and its influence in the society in a wider perspective. The Caste system is a social stratification based on various reasons like birth, occupation, color etc. The root cause for untouchability when it came to Hindus is Caste System. It is trite that Caste system among the Hindus has been structured on grades of the hierarchy of Chaturvarnya and the Dalits and the Scheduled Tribes among Sudras occupy the last rung in the social ladder. It has to be noted that though untouchability is sanctioned by dominant religion of Hinduism, the present era has the untouchability spread its roots to various religions. The Constituent Assembly left it to the Legislature to define "Untouchability" which has not been done paving the way to construe untouchability in a narrow perspective. Since untouchability is not defined, it results in ambiguity of the legislations passed as the legislature is not clear about what kind of issue they are addressing. Moreover, the existing legislations are weak because there are plethora of false cases which makes the judiciary to dilute the provisions of the legislations. There is need for a legislation which would in no way deprive seriously affected people at the same time avoid false cases.

UNTOUCHABILITY –AN EVIL IN NEED OF A BROADER VIEW

INTRODUCTION:

An understanding about the origin of caste system is very essential to know the concept of "Untouchability" and why it was practiced. To note the Caste system has not only been followed in India but also in many European countries and also in some parts of Japan. Each and every country follow some kind of caste system in one form or the other. For example, Africa has many ethnic groups and each ethnic group has number of castes. Caste System is said to have originated in India after the arrival of Indo Aryans which happened to be around 1500 B.C. So Caste system laid foundation for the untouchability in India. But taking an in-depth view it can be clearly understood that untouchability is practiced not only against Hindu Dalits but also other religions practice and experience untouchability. The impact of the legislations in abolishing Untouchability needs a scrutiny as the Untouchability rate keeps growing day by day.

DEFINITION OF CASTE:

Basically, the English word "Caste" is derived from Spanish word "Casta" which means race, breed, lineage or complex of hereditary qualities. The term 'Jati' was used by Indians to denote Caste.

Sir Henry Maine came up with an explanation as to that Castes had their origin as natural division with respect to



occupation later with the help of religious sanction got the present form. He also explained that caste system comes into play when integral part of religious dogma divides the people into superior and inferior group with different standards of living, functions etc. This definition by Sir Henry Maine throws light on an important aspect that caste system was influenced by many factors. There are various theories about the origin of Caste system. Each theory dealing with different perspective. Political scientists like Risley believed varna laid foundation for caste system.

To sum up, basically any definitions relating to caste system would rely on one basic word that is “division” or “social stratification”. It also embraces various other features like social and religious hierarchy, endogamy, segmental division of society and also lack of unrestricted freedom to choose occupation. So from this, an analogy can be drawn whenever there is stratification as superior and inferior there tends to be some form of untouchability.

WHO ARE DALITS?

The word “Dalit” derives its origin from the Sanskrit word dal- and means “broken, ground-down, downtrodden, or oppressed.” “Dalit” basically refers to Caste . Dalits are ‘outcastes’ falling outside the Varna system consisting of the hereditary Brahmin, Kshatriya, Vaishya, and Shudra classes. Dalits are considered impure and polluting and so they are secluded and isolated from the society.

The term is a British innovation from an article written by Annie Besant in the Indian

Review (1909) with the caption ‘the uplift of the Depressed Classes’. The word Dalits denotes poverty and their oppressed condition. But if that is the point almost all castes have poor people and also they are subjected to untouchability so even they must be considered as Untouchables but our system views just the SC and ST as oppressed class of people. There are people who converted to Christianity or Islam to escape untouchability. Though due to present condition they are regarded as BC but they are still in the condition of SC/ST and experience all forms of suppression but excluded from the term benefits. It is very clear that the word “Dalit” requires a new definition encompassing all the aspects of untouchability like poverty, oppressed condition, caste , religion etc.

LAWS AGAINST UNTOUCHABILITY:

The Preamble to the Constitution provides,

“We, the People of India, having solemnly resolved to constitute India into a sovereign, socialist, secular, democratic Republic and to secure to all its citizens-Justice: Social, Economic and Political, Liberty of thought, expression, belief faith and worship.

Equality of status and of opportunity, and to promote among them all fraternity, assuring the dignity of the individual and the unity and integrity of the nation.”

As Preamble is part of the Constitution¹, it forms the key to interpret the Constitutional provisions. So whenever Constitutional provisions are interpreted they must confirm to the principles embodied in the Preamble.

¹KesavanandaBharati vs. State Of Kerala,(1973) 4 SCC 225



Equality provides protection against discrimination. Egalitarian society to all the citizens is to be provided. The stress is on the words “all citizens” which makes equality available to all sections of the society. From this it can be inferred that even if a citizen who is not an SC/ST is being subjected to untouchability then equality should be restored to him. Liberty is no longer the privilege of the few, but a social conduct and right of all, high and low, men and women, irrespective of religion, caste or creed.²

Dr. B.R. Ambedkar, in his famous speech on 25-th November, 1949, on conclusion of deliberations of the Constituent Assembly, stated that in a trinity, liberty, equality and fraternity cannot be functioning separately. One cannot be divorced from other. He also believed that to be united as a nation, eradication of anti-national elements like castes which bring about separation is necessary. Fraternity shall be there only if there is nation and without that the rest two i.e. equality and liberty shall be a namesake existence.

The laws against untouchability derive heart and soul from Article 17 and it is self-operating and if read with Article 39 (a)(ii), it would follow that untouchability has been abolished and its practice in any form is forbidden.³

Article 17 deals with abolition of Untouchability and provides,

“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”.⁴ Article 17 draws attention to two most important things

- i) The first part of the Article is addressed not only to State but also private individuals
- ii) Though untouchability is not defined, the word “any form” gives wide ambit to the prohibition.

The Untouchability (Offences) Act, 1955 had been comprehensively amended by the Untouchability (Offences) Amendment and Miscellaneous Provision Act, 1976 which came into force from 19 November 1976. With this amendment the name of principle Act has been changed to the Protection of Civil Rights Act, 1955. Offences under the Protection of Civil Rights Act are cognizable as well as non-compoundable. It has not only created an offence but has provided to the victim an enforceable civil right after declaring the disability caused by untouchability as void.⁵ But this gives rise to an important question that why only particular class of people are given enforceable civil right and not the others. Downtrodden are present in each and every community but it is unfair and discriminatory to provide enforceable civil right to particular class.

²Anup Chand Kapur and K.K.Mishra, Select Constitution (UK, USA, France, Canada, Switzerland, Japan, China and India) pg.99,(16 th Ed.,2006)

³ Jai Singh vs. Union of India, AIR 1993 Raj 177.

⁴ INDIA CONS. art. 17.

⁵State of Karnataka vs. AppaBaluIngale (1993)Cr. LJ 1629(para.24) SC



Owing to the inability of the PCR Act, 1955 to deal with serious issues, The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been enacted with stringent provisions. The Statement of Objects and Reasons, it was stated, "Despite various measures to improve the socio-economic conditions of the SC and ST, they remain vulnerable. They are denied number of civil rights. They are subjected to various offenses, indignities, humiliation and harassment. They have, in several brutal incidents, been deprived of their life and property. Serious crimes are committed against them for various historical, social and economic reasons.

DEFINITION OF UNTOUCHABILITY:

The word "Untouchability" has not been defined by any of the Acts dealing with untouchability. Though Article 17 of Indian Constitution prohibits untouchability, neither the Constitutional makers nor the Constituent Assembly took efforts to define Untouchability. It was left to Central legislature to define the term Untouchability, but it has been left undefined.

It was held therein that the word "untouchability" is put in inverted commas as such it is not "untouchability" is put in inverted commas, as such it is not "untouchability" in its literal or grammatical sense, but the practice as it has developed historically in India. The above decision was approved by the Supreme Court⁶. It is mistakenly taken to be an obsolete attitude practiced towards persons belonging to lower caste people, particularly Harijans. But it is important to note that there is no

uniformity in the different parts of the country as to who would be regarded as an untouchable. It is evident from the fact the list of Scheduled Castes is made State wise, in the Constitution Scheduled Castes Order, made by the President⁷.

The case of Charls Raj v. State of Maharashtra⁸ is an example of how emphasis is placed more on the caste rather than the commission of offense of untouchability. In this case the complainant, an SC in State of Tamil Nadu but not so notified in the State of Maharashtra filed a case on the ground of untouchability under PCR Act. The court held while referring to the Article 341 of the Constitution, which says that a caste would be deemed to be a Scheduled Caste only in relation to that State as notified in the list, that because the caste of the complainant is not notified in the State of Maharashtra, he cannot avail the protection of the PCR Act thus restricting the application of the Act not only to scheduled castes but also to scheduled castes of a particular State.

The above quoted case is a clear example as to how reliance is placed more on caste rather than the cruelty they have been subjected to. It is wrongly interpreted as to only SC/ST can be subjected to untouchability and the rest of the people are treated equally.

During discussion before the final draft of the Article 17 was made, a doubt was expressed whether the intention was to abolish "untouchability" among Hindus, Christians or other communities or whether

⁶ State of M.P. vs. Ram Krishna Bolathia, AIR 1995 SC 1198.

⁷ Basu, D.D, Commentary on the Constitution of India. p. 2069 (Lexis Nexis, 2007).

⁸ MANU/MH/0859/2004.



it applied also to inter-communal untouchability. It was generally agreed that the purpose of Article 17 was to abolish untouchability in all forms irrespective of whether within a community or various community.⁹ The intention was never taken into account but rather it was narrowed down to one particular community.

DALITS –ARE THEY THE ONLY SUBJECTS OF UNTOUCHABILITY:

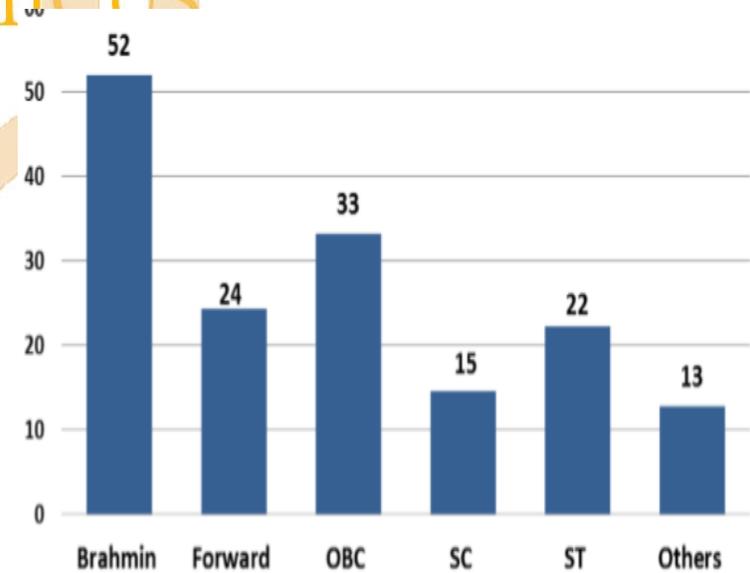
India has considerably higher amount of Dalits which is certainly about 200 million. The Christian and Muslim Dalits are not registered as ‘Scheduled Castes’. Some estimates shows that there are 15-20 million Christian Dalits in India and the number of Muslim Dalits may be as high as 100 million or more.¹⁰ For decades it has been argued that when Dalits convert themselves to Islam or Christianity they have equality as those religion do not have any castes and this was quoted as a reason to deprive them of any statutory protection against untouchability. The legislations are particularly intended for SC and ST which means just Hindus.

Almost all the Christians and the overwhelming majority across India hail from the so-called Dalit community, the former "untouchables" relegated to the bottom of the Hindu caste hierarchy. The Dalits are conferred with various benefits under Indian Constitution which includes 15

% of all government jobs, reservation in educational institutions etc. This provides them with a way to escape their traditional occupations and gives them equality and opportunity. The Dalits who are subjected to untouchability wanted to place themselves in a better position so their only way was to convert to other religion and get a higher status. But untouchability rested in the minds of the people and even after conversion they were not treated any better. As they convert, they get deprived of their rights and lose their right to report untouchability merely because of the fact they changed faith. At the same time, Constitution ensures every person right to practice religion of his own.

The graphs shown below are data collected by Indian Human Development Survey (IHDS).

PERCENT OF HOUSEHOLD PRACTICING UNTOUCHABILITY BASED OF CASTE :



⁹Advisory Committee Discussion on Apr. 21, 1947.

¹⁰India: Official Dalit population exceeds 200 million, INTERNATIONAL DALIT SOLIDARITY NETWORK, (May 29 th, 2013), <https://idsn.org/india-official-dalit-population-exceeds-200-million/>



Source: IHDS-II Data

WHEREAS OBC'S HAVE 26.

IS IT A PROBLEM IF AN SC ENTERS THE KITCHEN AND USES THE UTENSILS?

	No	Yes	Total
Brahmins	85	15	100
Forward Castes	93	7	100
OBCs	89	11	100
SCs	95	5	100
STs	93	7	100
Others	95	5	100
Total	91.47	8.53	100

Source: IHDS-II Data

DOES ANY MEMBER OF YOUR HOUSEHOLD PRACTICE UNTOUCHABILITY

	No	Yes	Total
Brahmins	56	44	100
Forward Castes	82	18	100
OBCs	74	26	100
SCs	89	11	100
STs	83	17	100
Total	79	21	100

Source: IHDS-II Data

NOTE: ADDING SC AND ST'S WHO PRACTICE UNTOUCHABILITY WE GET 27.

The above collected secondary data is clear as to all caste practice untouchability to some extent and adding the people who practice untouchability in SC and ST is more than that of OBCs. The shift of focus is on SC and ST who have sub caste which has resulted in practice of untouchability. Reading the provisions of SC/ST Act, it very clearly expresses, "Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe",so it excludes SC and ST from being punished for the offence of untouchability. It is a discriminatory treatment and the numbers prove that SC and ST taken together practice untouchability more than OBC. So this proves that the Act loses its significance because it is unable to address the evil called untouchability instead it is vague,ambiguous and discriminatory leading to poor implementation of the Act.

The IHDS-II Data also clearly shows that from various other graphs people who belong to all religion and income group follow untouchability at least to some extent.Mere 2.4% was the conviction rate under SC/ST Act, according to National Crimes Report Bureau(NCRB) report,2017.

UNTOUCHABILITY ON MUSLIMS:

A study was done by the Giri Institute of Development Studies (GIDS) under the project "Social and Educational Status ofOBC/Dalit Muslims in Uttar Pradesh" to assess the practice of untouchability by non-Dalit Muslims and Hindus towards Dalit Muslims in Uttar Pradesh. The survey was conducted from October 2014 to April 2015. It was administered to a state representative sample of 7,195 households located across



14 districts in four regions of Uttar Pradesh. That survey revealed that 20 percent of Dalit Muslims are kept at a distance by upper caste Muslims itself while it was 24 percent when it came to upper caste Hindus. 46 percent are not given food or water in similar utensils used by upper caste Hindus. The above percent represents state average of the survey undertaken.

The data shown could be just the tip of the iceberg, as relatively well-off sections among Dalit Muslims report higher incidences of untouchability, and perpetrators admit to it even more so. It leaves no room for any confusion that the practice of untouchability is not confined to Hindus alone. It spreads far and wide and perhaps no Indian religious community can escape it, including the Muslims.

FALSE CASES:

FALSE CASES REPORTED ON SC/ST ACT

YEAR	SCHEDULED CASTE	SCHEDULED TRIBE
2014	6144	1265
2015	5866	1177
2016	5344	912

Source: National Crime Records Bureau Report

The above table clearly reflects the number of false cases reported on SC/ST Act. The numbers are going down as judiciary has taken the matter into hands and pronounced

judgements which dilute the Act in order not to be misused.

An article titled “Final Reports” in Economic and Political Weekly, under Sec-498 A and the SC/ST Atrocities Act indicates that sometimes cases, amounting to 50%, under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, 1989 do not go to court and are closed by the police. The study also speaks about the misuse of SC/ST Act and also clearly mentions that the general discourse among the upper castes and men is that these laws are largely misused. Even the judiciary has expressed apprehensions and warned about the misuse of SC/ST Act. However the reality is a little different. There is every chance that upper caste members can misuse stringent laws by using SC/ST proxies.¹¹

In *Rini Johar vs. State of Maharashtra*¹², the Supreme Court considered the issue of wrongful arrest and payment of compensation. It was observed that wrongful arrest violates [Article 21](#) of the Constitution and thus the victim of arrest was entitled to compensation. But the compensation cannot set right the loss of reputation of the accused. So preliminary investigation is necessary in order to protect the innocents. Presumption of innocence is a human right. No doubt, placing of burden of proof on accused in certain circumstances may be permissible but there cannot be presumption of guilt so as to deprive a person of his liberty without an opportunity before an

¹¹ Sthabir Khora, “Final Reports” under Sec 498-A and The SC/ST Atrocities Act, Economic and Political Weekly, Oct. 11, 2014.

¹² (2016) 11 SCC 703.



independent forum or Court.¹³ So in order to ensure public faith in judiciary it is very important that the innocents don't get punished in any way.

SAFEGUARDS OF SUPREME COURT AGAINST MISUSE OF SC AND ST ACT:

In the case of SubhashKashinath Mahajan vs. The State of Maharashtra and others.¹⁴, the safeguards against misuse of SC and ST Act has been laid down :

1. There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide.
2. In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.
3. To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and the allegations are not frivolous or motivated.

4. Any violation of direction (2) and (3) will be actionable by way of disciplinary action as well as contempt.

SUGGESTIONS:

The Protection of Civil Rights Act, 1955 which was found to be ineffective and so Scheduled Castes and Scheduled Tribes Act was brought into force which instead of addressing the untouchability paves way for false cases. Based on the secondary data analysed and precedent cases referred following suggestions are put forth

1) Untouchability just like any other offense should be acknowledged to be practiced by any person. It is not that only Hindu high caste people practice Untouchability. The SC/ST Act leaves out untouchability if practiced by SC and ST themselves. So untouchability practiced by any person should be equally punishable. The Act should be in such a way that it should emphasize that Caste system is one of the reason for untouchability and not the only reason.

2) To eradicate Untouchability that there is a need for legislations which would encompass the Untouchability as a whole instead of just providing relief to SC and ST. As the data clearly reveals that not only Hindus but also Muslims and Christians are subjected to Untouchability. NCRB report also reveals that one in four member practices Untouchability. So it must be understood that it is a wide concept and narrow relief to specific people cannot eradicate this social evil.

¹³Noor Aga versus State of Punjab, (2008) 16 SCC 417

¹⁴ March 20, 2018.



3) The number of false cases are really high for which the survey is the proof. Recently Supreme Court diluted the provisions so as to not put innocent people under trouble. The first major aspect is that Sec.18 of SC/ST Act is very clear as to anticipatory bail cannot be granted to these offenses. But Judicial legislation states under genuine and reasonable circumstances, anticipatory bail available. Sec 18 should be given a careful interpretation and should not be allowed to misuse.

4) Normal rule in case of cognizable offence is that after the information is received, arrest has to be made. But under the Act preliminary enquiry must be done within 7 days which is a very short period where no such enquiry is conducted and merely cases are filed. When it comes to trial it is understood that there are lack of evidences and the accused is acquitted. A procedure has to be laid down and accordingly preliminary enquiry has to be done. The procedure must be very clear as to not let the offender threaten or influence the victim and due protection should be ensured to the victim. So the balance should be made by extending the days for preliminary enquiry and protection ensured to the victim.

5) Rather than recourse to Sec.499 and 500 of IPC, the Act itself must suggest a solution in case of false cases are reported. When a contention was put forth before the Supreme Court that in case of false information or false cases reported, it was rejected stating that recourse to IPC should be taken. It also stated that in case the relief is provided in the Act itself, it would go against the very nature of the Act. But the very same Supreme Court was under a situation to dilute the provisions of the Act due to

increasing number of false cases. So the Act must itself state the punishment for false cases.

6) Instead of too many judicial legislations, legislature should take the matter into its hands and deal with the issue and provide solutions. As the law making power vests with the legislature, the legislation when made by the legislature gets its true nature and cannot be easily struck down unless it is in violation of any constitutional provision.

7) It is understood clearly that the particular legislation was brought into force to address the issue of SC/ST as they were suppressed and even now various instances prove that they are still suppressed. So special provisions may be laid down for them but neglecting the untouchability faced by other communities is discriminatory. SC/ST since they are mostly subjected to untouchability can be provided with special provisions.

CONCLUSION:

According to Dr. Ambedkar "untouchability is the notion of defilement, pollution, contamination and the ways and means of getting rid of that defilement. It is a permanent hereditary stain which nothing can clean". But slowly stepping into an era with broad minded people, it is not a hereditary stain. With proper enforcement of laws it can be removed right from the root. All it requires is to find the root and clear the evil right from there. But the current situation is that it is vague and ambiguous and is not addressing the issue as a whole. When the law is flawless it can completely get rid of the social evil.
