



# SOCIAL ALIENATION AND ELEVATION OF THE UNTOUCHABLES IN INDIA.

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## Abstract

Untouchability is a pernicious kind of social isolation used against members of lower caste societies by higher caste communities. In accordance with the Indian Constitution, it is punishable by law. It is a type of social institution that supports and upholds actions that are exploitative, humiliating, and discriminating towards members of particular social groups. Untouchability with the caste system is mostly exclusive to South Asia, despite similar types of discrimination being present around the world. Their rights are protected under a specific provision in the Indian constitution. The constitution's Article 17 attempts to give dalits more authority and makes being untouchable a crime. Any person who engages in untouchability will face legal sanctions.. Thanks to the legal provisions, untouchability has drastically declined in the country, especially in urban areas. However, there is still a long way to go in completely eliminating untouchability by roots.

**KEY WORDS** - Untouchability, Indian constitution, exploitation, Justice, The Supreme Court

## Introduction

In our society there still exist feeling of superiority of caste and birth. We can experience the practice of untouchability in everyday life around us, especially in rural and semi-urban areas of the country. Outcasts in the strictest sense, untouchables. They go by a variety of names, including the downtrodden classes," "harijans, etc., but the term "Dalits" is currently used more commonly. In India's caste system, Dalits, literally "broken people," are at the bottom. But, traditionally, those born into the lowest castes and classes, as well as those who worked in menial occupations, committed crimes, had contagious diseases, and belonged to tribes outside of the so-called civilised world, were thought of as being untouchables. The paper first discusses the historical evolution and what constitutes the untouchables and how the laws were not so prevalent in the past that led to the massive exploitation of untouchables at the hands of their supposedly counter "superior" castes. This is furthered by how with the evolution of our society and with the Constitution being in place, the gravity of this issue was addressed in most of the constituent assembly debates and certain laws were formulated for their upliftment. After discussing the Constitutional provisions and analyzing them, the recent laws that have been put in place and how far they have been successful in rendering justice will be analyzed; it will be substantiated by some landmark judgments taken by the Supreme Court for the backward classes and the untouchables. Even after manifold efforts taken by the Legislature and the Judiciary,

can we really affirm that the society has actually become sensitized towards them? Can we affirm that Justice has been rendered in reality and not just in text to these otherwise oppressed classes?

## Constitutional provisions

The term untouchability has never been defined by the Indian Constitution, however it is considered to be a 'liberal' construction and certain sociologists have tried to put words in the concept. To quote the words of Kailash Nath Sharma "Untouchable castes are that whose touch makes a person profane and has to perform certain atonement." Untouchables have been called by different names from time immemorial to wage the gap between them and the other castes. Mahatma Gandhi lovingly called the untouchables 'Harijans' (meaning children of God). There were several other terms used to define them, for example the 'Panchame', the 'Chandala', etc. They have also, in recent times, come to be known as the 'depressed' or "oppressed" classes. There are different views on how the practice of untouchability came into existence. According to the Hindu tradition, untouchables were the children born to people in which a Shudra male married a Brahman female. In another notion, the Mana theory, untouchables were those who were engaged in supposedly "dirty" occupations, and who were not allowed to engage with higher caste people. The roots of untouchability in India are attributed to the socio-religious structure and more significantly, the time-honoured system of social stratification based on caste. The ideology that a certain caste is superior and inferior to the other helps foster the growth of untouchability. Untouchability, therefore, has its roots in the Indian caste system. The atrocities against untouchables can also be attributed to the fact that in those times, there was the dearth of laws and rights for their protection. People could go scot-free after inflicting tortures on them. Now, however, the times have changed, and so have the laws. This highlights the significance of laws and rights in order to ensure a just and discrimination free society. When India got independence in 1947, several discriminatory practices prevailed, which hailed majorly from the 200 years of colonial rule. It was thus very challenging for the nation to frame its Constitution or the law guide book to fight atrocities, and many such problems. Therefore, before the final Constitution was put in place, several debates and deliberations were carried out, and laws were established for the abolition of discriminatory practices. According to Article 17 of the Constitution, "Untouchability" is abolished and its practice in any form is forbidden. Here, the word is inserted in double inverted commas to emphasize not on its literal sense, but the practice of untouchability as developed historically in India. The use of the word is in the sense "Practice known as untouchability". The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with the law. This is reflective in the Untouchability Offences Act, 1955, which was passed by the Parliament in accordance with the provisions of Article 17, which also does not define the word "Untouchability". Dr. B.R. Ambedkar, who drafted the Constitution, was also the propagator of the rights of the 'harijans', or 'untouchables'. At the same time, other eminent people like Shri P. Kannan of Madras emphasized how the poor harijan candidates were being discriminated against. He mentioned in the deliberations how the harijan candidates did not get proper appointments in government services, and how the higher officers selected only their own people but not harijans. Other prominent personalities like T.V. Muniswami Pillai of Madras and Shri T. Channaiah of Mysore talked about how the backward communities were suffering from two disabilities, namely the social and the educational. Quite a few members pleaded for the substitution of the word "scheduled caste" for "backward classes" in Article 16(4) as the latter term was very vague. By these illustrations, we know how there was a change in the dominant discourse as several laws were being formulated that stressed upon the oppression of the scheduled castes, and to give them appropriate recognition that they were otherwise bereft of.

## Role of the Supreme Court

The Supreme Court is considered to be the sole arbiter of Fundamental Rights, and the highest court of justice in India. But how far has the Judiciary been successful in rendering justice to the oppressed is the actual question here. From what could be collected out of the research, the Judiciary has done some commendable work by passing certain monumental judgments that helped uplift the status and position of the 'untouchables'. Article 17 of the Constitution is on the lines of the provisions of Article 2 of the Universal Declaration of Human

Rights. The article guarantees social justice and dignity to a vast population that they were denied earlier. In one of the first cases of its kind on "untouchability", namely 'State of Karnataka v. Appa Balu Ingale', the Supreme Court held that the Article 17's main purpose is to establish new ideals for the society, which were also based on the principles of egalitarianism. In another case, 'State v Gulab Singh', the Allahabad High Court took action and punished the Hindus who attempted to compel the bridegroom from the Scheduled Caste to descend from the Dola-palki while passing through the village. In another case, 'Surya Narayan Chaudhary v State of Rajasthan', the Rajasthan High Court allowed the entry of Harijans to temples without purification ceremonies which violated the Articles 14, 15, and 17 of the Constitution, on a Public Interest Petition. The High court disposed off the petition with necessary directions in favour of Harijans. It further ruled that every devotee, including the Harijan who wants to enter the temple, shall be permitted to do so in accordance with the general practice. Harijans shall not be subjected to additional conditions. The Judiciary also took significant steps to uphold the integrity of these castes and class under Article 14, which talks about the right to equality.

The Supreme Court of India in 'Dalmia Cement (Bharat) Ltd. v. Union of India' held that the concept of Equality in Article 14 in its proper essence encompasses both social and economic justice for the evaluation of a proper healthy order, which is possible only with the

upliftment of scheduled castes and tribes to bring them at par with the rest of the society. The Supreme Court also approves of the view that Article 14 permits some special provisions and differential treatment, which it considers necessary for the upliftment of the scheduled castes.

In another case, 'Giri V.V v. Dora Suri' held that section 54(4) of the Representation of the People Act 1951, which confers a double advantage upon members of the Scheduled Castes or Tribes to be returned to general seats even though seats have been reserved for them under the Constitution, being sanctioned by Article 15(4) (A) does not violate the principle of equality embodied under Article 14 of the Constitution. However, in some instances, the Supreme Court also put an embargo on the unchallenged power because it didn't want the entire system to become unfair. So, in 'Arti Gupta v. State of Punjab' the Supreme Court held that reduction of minimum qualifying marks from 35% to 25% in order to accommodate more candidates of Scheduled castes and tribes is arbitrary and violative of Article 14 of the Constitution. Before the first amendment to the Constitution under Part III, there were no provisions for the preferential treatment to members of Scheduled castes and tribes for their upliftment in respect to education. Mere removal of discrimination was not enough because they had been oppressed for too long. In 'Champakam Dorairajan v. State of Madras', the judgments led to the First Amendment of the Constitution of India. The judgment in this case was one of its kind because it was the first major judgment regarding reservations in Republic of India. These

landmark judgments are all testimony to the fact that the Judiciary has played an active role for the upliftment of these oppressed sections. In recent times, the laws have become more stringent concerning the scheduled castes. In 1989, the SC/ST Act was passed by the Parliament that bestowed power and dignity to the untouchables and marginalized. After it was introduced, the act immediately altered the power structure that prevailed between castes, especially in areas where the upper castes were likely to have a stronghold on politics and police. This act attempted to bring the oppressed sections at par with the rest of the society, because of which it received widespread resentment from the other castes since they never considered the Scheduled Castes as equal. There was so much turmoil on the issue of reservation all these years. The apex court kept on intervening on the issue on different occasions, and has also passed judgments that helped prevent the arbitrary use of this act. The Court recently passed a judgement that FIR should be lodged by the SC/ST only after an early enquiry conducted by the gazetted officer, also that an approval of the senior official would be

needed for arrest, as the two judges bench of the supreme court in a ruling said that there were instances of abuse of the act by vested interests. The affected groups and the opposition criticized the judgment, burnt down many public places, called a nation bandh, and asked for immediate intervention by the centre, which therefore resulted in the refuting of Supreme Court's judgment and the original act being in place by the Parliament by introducing a bill, namely the 'Scheduled Castes and Scheduled tribes (Prevention of Atrocities) Amendment Bill', 2018. The government didn't want to leave any stone unturned to appease the

SC/ST community, because they happen to be a very huge vote bank for the government, because of which, by incorporating Section 18A circumvented the law laid down by the Supreme Court against the misuse of the act. This act shows that there is a serious contention between Supreme Court and the Parliament (Government).

## Conclusion

The essence of our Democracy is the 'Rule of law'. However, the 'Rule of law' and the 'Populist demand' are in divergence with each other, where the political mileage of the government is also to be analyzed. In such a tough situation, the dominant discourse looks up to the Court to render them justice, since the act was sometimes misused to frame the innocent people (exceptions). Therefore, after analyzing all the various acts and laws for the untouchables, we come to the conclusion how there has been an elevation in their position in the society because of the preferential treatment imparted to them, which was necessary to bring them at par with the rest of the society. However, social acceptance of these castes is still an implausible goal that seems difficult to achieve. And unless the Scheduled castes are socially accepted by the society, they can never achieve justice in true sense.

## REFERENCES

1. Bayly, S. (2000) *Caste, Society, and Politics in India*. New Delhi: Cambridge University Press
2. Charsley, S. (2001) "'Untouchable": What is in a Name?', *Journal of the Royal Anthropological Institute* (new series) 2: 1–23.
3. Dumont, L. (1970) *Homo Hierarchicus: The Caste System and its Implications*. London: Vikas Publications
4. Gandhi, M. K. (1931) 'The Future of India', *International Affairs* 10(6): 721–39.
5. Ghose, S. (2003) 'The Dalit in India', *Social Research* 70(1): 83–109.
6. Hutton, J. H. (1946) *Caste in India: Its Nature, Functions and Origins*. London: Cambridge University Press.
7. Kavoori, P. S. (2002) 'The Varna Tropic System: An Ecological Theory of Caste Formation', *Economic and Political Weekly* 23 March: 1156–64.
8. Kroeber, A. L. (1930) 'Caste', in *Encyclopaedia of the Social Sciences*, pp. 254–6. New York: Macmillan
9. Nesfield, J. C. (1885) *Brief View of the Caste System of the North-Western Provinces and Oudh*. Allahabad: North-Western Provinces and Oudh Education Department.
10. Omvedt, G. (2004) 'Untouchables in the World of IT' *Contemporary Review* 284(1660): 286–8.
11. Risley, H. (1908) *The People of India*. London: Thacker and Co. Sooryamoorthy, R. (2006) 'Caste Systems', in Thomas M. Leonard (ed.)