

INTERNATIONAL AND NATIONAL LEGISLATIONS FOR CONTROLLING ATROCITIES AGAINST DALITS

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Abstract

All forms of untouchability, inhuman and degrading discrimination have been prevailing in India in one form or another. The offences of Untouchability may rightly be categorized as an offence against the human values and humanity. It reduces persons into mere slaves or chattel who have no civil personality or importance. Moreover, the factors like the size of the country, its huge population, the massive poverty and the great disparities in the distribution of wealth among various social groups affect the advancement of rights. Therefore, the International Covenant on Civil and Political Rights has got relevance in this context, particularly Art. 26, which prohibits discrimination. Despite these provisions, the Convention is not self-executing in India. The state should take steps to incorporate fully the provisions of the Covenant in domestic law, so that individuals may invoke them directly before the Courts. Besides, due consideration be given by the authorities to ratifying the Optional Protocol to the Covenant. It is to be noted that despite measures taken by the Government, members of Dalit community as well as the so-called backward classes and ethnic and national minorities continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant, inter alia inter-caste violence, bonded labour and discrimination of all kinds. This Article also focuses on the practice of “untouchability”—the imposition of social disabilities on persons because of their birth in certain castes.

Keywords

Atrocity, Casteism, Dalit, Tribe, Untouchability, Victim, Violence.

Introduction

Dalits have been considered, for centuries, as lesser human being and subjected to caste-based atrocities for various, historical, social and economic reasons. The caste-based discrimination sanctified by Hindu religious scriptures, is still haunting a large segment of Indian society, i.e. Dalits. Despite the formal protections under the laws, Dalits are still meted out with atrocities, which are striking at their very basic rights. The vested upper caste interest and the desire to maintain the monopoly over the community resources is involved in maintaining the caste based discrimination and atrocities.³

Further, the state complicity as a whole has turned the Prevention of Atrocities Act nugatory and ineffective thus resulting in perpetuation of atrocities. The caste-based discrimination is no less grave than the discrimination faced by the blacks on racial grounds of race, thus needs to be fought at the international level. However, this assertion is getting receiving vehement opposition by the vested interest with the contention that caste is not similar to race and thus do not fall within the purview of Convention on Elimination of Racial Discrimination.⁴ The attention must be given to the gravity of the caste -descent based discrimination and growing human rights violations of the scheduled castes rather than concentrating on the nomenclature of the form of discrimination.

Discriminatory and cruel, inhuman and degrading treatment of over 167 million people in India has been justified based on caste⁵. Caste is descent-based and hereditary in nature. It is a characteristic determined by one's birth into a particular caste, irrespective of the faith practiced by the individual. Caste denotes a traditional system of rigid social stratification into ranked groups defined by descent and occupation. Caste divisions dominate in housing, marriage, employment, and general social interaction—divisions that are reinforced through the practice and threat of social ostracism, economic boycotts, and physical violence. This practice relegates Dalits, or so-called untouchables (known in Indian legal parlance as scheduled castes), to a lifetime of discrimination, exploitation and violence. India

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³ Narayan Mishra, *Exploitation and Atrocities on the Dalits*(2004), p.110.

⁴ Dr.Jadahv P.B, *Dalits and Human Rights-Emerging Scenario*(2010),pp.6-7.

⁵ Sita Deulker, *Dalit- Past, Present and Future*(2004), p.110.

has consistently cited its numerous legislations and government policies as a measure of compliance with its obligations to end caste-based discrimination, choosing to ignore its failure to implement these measures, which has resulted in continued, and sometimes enhanced, brutalities against Dalits.⁶

As we know, India is a nation of castes and the world's largest democracy, but the caste-based discrimination has, for centuries, remained a haunting experience for a large populace of the society. The members of this large segment known as untouchables or *Dalits* were considered as lesser human beings and therefore considered 'unfit' for any human rights and were in fact denied even the right to be human. Discrimination against Dalits is extreme in rural areas and small towns where a majority of Indian population lives. They were believed to be the recipient of severe social disabilities, slavery and indignities.⁷ The Constitutional framers were well aware of the discrimination faced by Scheduled Castes or Dalits, so they provided fundamental rights coupled with positive discrimination to eliminate all kinds of discrimination.⁸ In addition to that, protective legislation has been enacted to eradicate social prejudices and atrocities against *Dalits*.

Despite the Constitutional protection and benefits of equal rights and affirmative action and the protective laws enacted for the protection and uplifting of *dalits*, the caste-based discrimination is persisting and the *Dalits* are frequently being made targets of physical and sexual violence. Atrocities are day-to-day phenomena and *dalits* are facing indignities and discrimination due to various historical, social and economic reasons.⁹

In our society and polity, we have witnessed a sea change over the years. A new social and political culture has replaced the old one. People have developed politically, socially, culturally and economically, but an unfortunate section of our society is still forced to live under the same hostile circumstances i.e., Scheduled Caste and Scheduled Tribes (*Dalits*). Economic backwardness of these groups is mostly due to injustice done to them by the high castes and due to exploitation.¹⁰

From the time immemorial, they worked like slaves, sold as commodities resulting in their social discrimination, economic deprivation and educational backwardness. The framers of Indian Constitution recognized these groups and included special provisions in the Constitution for the protection and upliftment of these groups. They thought that, by incorporating special protection, the social, economic, political and educational backwardness could gradually be reduced.¹¹

Besides, some special legislations were passed by the Parliament such as The Protection of Civil Rights Act, 1955, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules 1995 etc.

THE CASTE SYSTEM

Historically the caste system has formed the social and economic framework for the life of the people in India.¹² In its essential form, caste as the system of social and economic governance is based on principles and customary rules that involve the division of people into social groups (castes) where assignments of rights are determined by birth are fixed and hereditary. The assignment of basic rights among various castes is unequal and hierarchical, with those at the top enjoying most rights coupled with least duties and those at the bottom performing most duties coupled with no rights. The system is maintained through the rigid enforcement of social ostracism (a system of social and economic penalties) in case of any deviations. Thus, the doctrine of inequality is the core and heart of the caste system. Supported by philosophical elements, it constructs the moral, social and legal foundations of Hindu society.

One of the exclusive features of Indian society is the institution of caste, perhaps the longest surviving social hierarchy in the world. Caste is a defining feature of Hinduism and situates people in complex ordering of social groups based on ritual purity.¹³ Dr. Kelkar says that the caste owes its origin to the Spanish word '*casta*' that means breed, race, strain or a complex of hereditary qualities.¹⁴ Dr. B R Ambedkar says that caste as "a social groups having two characteristics: (i) membership is confined to those who are born of members and includes all persons so born (ii) the members are forbidden by an inexorable social law to marry outside the group".¹⁵

⁶ *Id*, p.126.

⁷ Wasiyoddin R. Mujawar, *Laws for Dalits Rights and Dignity* (2009), p.23.

⁸ Asthana P, *Dalits Movements* (1974), p.234.

⁹ National Human Right Commission, *Report on Prevention on Atrocities on Scheduled Caste* (2004), p.57

¹⁰ Panigrahi.S K, *Caste in India - A Historical Perspective* (2010), pp.237-239.

¹¹ Mamta Yadhav, *Rise of Dalits* (2010), p.3.

¹² *Id*, p.7

¹³ Smita Narula, "*Broken People: Caste Violence Against India's Untouchables*" (1999), p.56.

¹⁴ Joseph Benjamin, "*Caste-Class Situation in India and Human Rights*" (2004), p.77

¹⁵ Dr. B.R.Ambedkar, "*Castes in India: Their Mechanism, Genesis and Development*", *Indian Antiquary* 1,2 (1917), available at: <http://www.ambedkar.org>

Dr. Ambedkar defines Caste as “an artificial chopping of the population into fixed and definite units, each one prevented from fusing into another through the custom of endogamy. Thus, the conclusion is inevitable that endogamy is the only characteristic that is peculiar to Caste¹⁶. Thus, endogamy and ban on inter-dining are the main characteristics of caste system. The genesis of caste can be traced back to 'Rig Vedic' period. In the early Rig Vedic period, the society was divided into four 'varnas', i.e. Brahmin, Kshatriya, Vaishya and Shudra. The Rig Veda provided basis for this Varna nomenclature.¹⁷ The first three categories were considered as twice born and called 'Dwijja'. The last category, i.e. Shudra was considered as lowest born.

The *Dharmasutras* laid down the duties of each of the four *varnas* and such duties were based on the notion of ritual purity. All forms of disabilities were imposed on the lowest born and they were deprived of religious and legal rights. Crimes committed by *Shudra* against the Brahmins and others were punished severely. On the other hand, the crimes committed against the *Shudra* were punished lightly¹⁸. Gradually this social division was multiplied into various castes and sub-castes.

In the later *Vedic* period, the division of society into four *varnas* became strict. Caste disabilities were enforced strictly and secular punishments were imposed on those who deviated from the prescribed social conduct. There were no chances of mobility within caste interse. Thus, the untouchables faced complete marginalization subjected to severe discrimination did the most menial and degrading tasks and had no right to change their position in the society.

The caste system had resulted into many disabilities, which further resulted into many social consequences. The ban on inter-dining and the rule of endogamy made the caste system rigid and there were no possibilities of a *shudra* to become a priest. The *shudras* were denied the sacred twice-born ceremony (*Upanayana Samskara*); they were not allowed to enter into temples and acquire knowledge and it was considered a sin and a crime to give them education. They could not even hear and recite the verses and *mantras* of the religious texts.¹⁹

The denial of education resulted in illiteracy, which in turn result in educational backwardness. The *shudras* were not allowed to accompany the *dwija* and even a single look of the untouchable by the Brahmin was considered polluting the Brahmin, and the Brahmin has to purify himself after having a look of the sun.²⁰ Therefore, the untouchables were ex-communicated from the rest of the society. This ex-communication and social ostracism promoted the practice of untouchability, which resulted in their social backwardness. *Shudras* were not allowed to own property and they were not to hold a position under the State. The denial of property to the dalits made them poor and dependent on others thus resulted in their economic backwardness. A *Shudra* must not deviate from his path, i.e. the ungrudging service of the forced and bonded labour of *Shudras*.

Thus under the Hindu social order the *Shudras* and untouchables were considered as highly defiling and unworthy of any rights but only recipient of severe disabilities. Their overall backwardness made them vulnerable to humiliations, slavery, indignities and atrocities.²¹ The untouchability so faced by the untouchables was no lesser grave than the slavery experienced by the 'blacks' and the only difference between the two was that the religious scriptures did not sanction the latter, but the former was an integral part of the Hindu religion.²² The only idea behind this graded inequality was to establish upper caste hegemony in the society, the caste based discrimination, and the caste superiority was to maintain such hegemony and was backbone of the upper caste domination.

Who are the Dalits?

The word 'Dalit' comes from the Marathi language which means 'ground', "suppressed", "crushed" or "broken to pieces, was first used by Jyothirao Phule in the 19th century in the context of cast oppression faced by the erstwhile untouchable castes from the twice born Hindu castes. Those who are beneath the entire caste system – and are therefore literally 'outcaste' as well as 'untouchable' – call themselves 'Dalits'.²³

B R Ambedkar also used the word in his Marathi speeches in the 1920s and 1930s.²⁴ The word gained widespread currency when the Dalit Panther Party revived the term in their 1973 manifesto. "Dalit" implies those who have been broken and ground down by those above them in the social hierarchy in a deliberate and active way. To many Dalits the word is patronising, and is something of a pejorative epithet among Dalits to refer to someone to their

16 *Ibid.*

17 The Purusha Sukta in Rig Veda says, 'the Brahmin came from the mouth, the Kshatriya from the arms, the Vaishya from the thigh and the Shudra from the feet of the Brahmin'. The Constitution of society prescribed by the Purusha Sukta is known as *Chaturvarnya*.

18 T.R.Naval, *Law of Prevention of Atrocities on the Scheduled Castes and Scheduled Tribes* (2001), p.94

19 *Ibid.*

20 *Ibid.*

21 Sukhadio Thorat, *Dalits in India- Search for a Common Destiny* (2009), p.131

22 Shailendra Kharat, "Dalits and Human Rights", *Journal of Institute of Human Rights*, (2006), pp.56-57

23 Asok Kumar Jha, *Dalitisation of Dalits* (2004), p.12

24 Dr Jadhav P.B, *Dalits Sand Human Rights-Emerging Scenario* (2010), pp. 11-13

own that has internalised attitudes of inferiority and has an accepting view of his place in the Hindu world. The use of the word 'Dalit', encouraged by great Dalit leader Dr. Ambedkar, has enabled the development of a collective identity among all the 'outcaste' people, whatever their sub-caste, ethnicity or religion. The government nevertheless use the term 'Scheduled Castes' for Dalits.²⁵

The SCs and STs are a group recognized by the British Administration in India for the purpose of preferential treatment. The definition of the term Scheduled Caste was possibly the result of the attempts, made by Risley in 1901, the then Census Commissioner, who classified the Hindu castes into seven categories and thereafter an attempt was made in 1911 to ascertain which of these castes and tribes were discriminated against on religions and social grounds.²⁶

The discriminated castes and tribes were named as depressed classes in 1921 and systematized by Hutton in 1933, the then Census Commissioner. These castes known as untouchables, depressed classes or exterior castes before the advent of Simon Commission that coined the term Scheduled Castes, placed it in the Government of India Act, 1935.²⁷

The Act defined the term Schedule Castes as such castes, races and tribes corresponding to the classes of persons formerly known as the depressed classes as His Majesty in Council may specify²⁸. The Constituent Assembly also used the word Scheduled Castes for these socially, economically and religiously backward castes while drafting the Constitution for Independent India.

This term was introduced by the Government of India Act, 1935 in establishing a scheme for the reservation of seats in legislatures. It remains the official legal category and it has become an integral part of the set of terms through which identities are allocated and claimed and the structure of contemporary Indian society is understood.

Social Status of Dalits

In the context of traditional Hindu society, dalits status has often been historically associated with occupations regarded as ritually impure, such as any occupation involving butchering, removal of dead animals removal of night soil (human feces) and leather work. One million Dalits work as manual scavengers, clearing latrines and sewers by hand and clearing away dead animals. Engaging in these activities was considered to be polluting to the individual who performed them, and this pollution was considered to be 'contagious'.

As a result, Dalits were commonly banned and segregated from full participation in Hindu social life (they could not enter the premises of a temple or a school and stayed outside the village), while elaborate precautions were sometimes observed to prevent incidental contacts between Dalits and other casts.²⁹ Discrimination against Dalits still exists in rural areas (where two thirds of India's people live) in the private sphere, in every day matters such as access to eating-places, schools, temples, and water sources. It has largely disappeared in urban areas and in the public sphere.³⁰

Most of the Dalits are bonded workers and many work in slave-like conditions to pay off debts that were incurred generations ago. The majority of Dalits live in segregation and experience violence, murder, rape and other atrocities. Many go unreported, and few registered cases ever get to trail³¹. Even though large majority of dalits in India are Hindus as per the *Sachar Committee Report 2006* revealed that Dalits are not limited only to Hinduism but also to some other religions such as Christianity, Sikhism, Jainism and Islam.³² While the Indian constitution has duly made special provisions for the Dalits there is a demand from Dalits who have converted to other religions that the statutory benefits should extent to them as well.³³

The Dalit status has often been historically associated with occupations regarded as ritually impure, such as any involving leatherwork, butchering, or removal of rubbish, animal carcasses, and waste. Dalits work as manual labourers cleaning streets, latrines, sewers engaging in these activities were considered to be polluting to the individual, and this pollution was considered contagious. As a result, Dalits were commonly segregated, and banned from full participation in Hindu social life. For example, they could not enter a temple or a school, and were required to stay outside the village.³⁴

²⁵ *Id.*, p.16.

²⁶ Mamta Rajawat, *Dalit and Law* (2005), p.67

²⁷ Dr. Hoshior Singh & Dr. A.S. Malik, "*Socio-Economic Development of Scheduled Castes in India*" (2001), p.2

²⁸ *Ibid.*

²⁹ Hugo Gorringe, *Untouchable Citizens* (2005), p.112

³⁰ Sarkar. R.M, *Dalits in India: Past and Present* (2006), p.89

³¹ "Dalits Atrocities", *Human Rights News Bulletin*, Available at: <http://www.nl/dalitatroc0509.html> (Accessed on Dec.19, 2013.)

³² Mamta Yadhav, *Supra* n.11, pp.4-5

³³ *Id.* p.9

³⁴ Makwana M H and Richard Paris (Edit.), *Backward Class and Social Justice* (2006), p.153.

From the time immemorial, they worked like slaves, sold as commodities resulting in their social discrimination, economic deprivation and educational backwardness. It is no wonder then that this section of society oppressed a hundred times over with no sign of any redressal possible within the democratic framework. For this reason it helps to think that the idea of equality be understood as an issue of social justice, not a single principle but as a complex group of principles forming the basic care of today's egalitarianism. In rural India, however, caste origins are more readily apparent and Dalits often remain excluded from local religious life, though some qualitative evidence suggests that its severity is fast diminishing.³⁵

Thus, violations of the basic rights of Dalits are quite blatant not something hidden from public view. Therefore, it is the right time to ensure that mere declarations of rights not make any result but it has to be enforced without any delay, partiality and discrimination at the expense of the State with the support of the society.

The social relation between the Dalits and caste Hindus has often been uncordeal, and it has been a contesting and conflicting one where the Dalit have been the marginalized, oppressed and exploited category. They have been the victims of worst form violence for centuries. As far the question, why atrocities against Dalits continue unabated, it has been well argued that it is the systematic defect in the social and village structure that has been responsible for atrocities against Dalits.³⁶

The Dalits are the category of people belonging to the lowest rung of social stratification. They are subjected to cruel and inhumane treatment, injustice and exploitation from time immemorial. Discrimination based on caste negates all the basic rights of a section of society and thereby they failed to come to the mainstream of the society.

Any crime committed against the Dalits is not an act perpetrated by an 'anti-social element'. Caste discrimination and caste related violence are the logical outcome of the historical hatred and social disgust by the upper castes and the upper class maintain for centuries towards the Dalit community. This ancient animosity in the day-to-day life gets converted in to anger and this anger takes the form of outrageous crimes. These crimes have deleterious and dreadful effects on *Dalits*.³⁷

Social hierarchy, social segregation, ascribed status, fixed occupation, endogamy, communal restrictions, oppression, and humiliation of lower castes and outcastes are the chief characteristics of the caste system. Caste system by its very nature is against the rights and liberties of certain sections of the society and as such is a human problem.³⁸

The problem of disadvantaged sections of the population has existed in India for Centuries; but it acquired special importance after the First World War when a system of protection began to be evolved. Later, that system came to be supported by the concept of human rights and fundamental freedoms in the United Nations Charter and the Universal Declaration of Human Rights.³⁹

If we focused more on human rights of *Dalits*, as a group, it was because we realized that most of the violations of their human rights were distinctly connected to their being members of a certain class that is why, they are discriminated, abused and did not enjoy the basic human rights.

In this scenario, when we analyze the legal measures to prevent atrocities, we can divide these in to International norms, constitutional measures and other legal measures. The International norms are in the nature of Conventions and Treaties and India is a signatory of most of these Conventions and Treaties. Therefore, India is obligated to comply with these International norms. Besides, there are certain Constitutional provisions and some special legislation for the protection and uplifting the rights of these vulnerable sections of the society.

Preventive Measures under International Law and the Treatment of Dalits

In addition to India's domestic protections against the mistreatment of Dalits, several provisions of international law also address the condition of Dalits. These international provisions establish obligations for India to meet in terms of securing Dalit rights. First, as a UN Member State, India is bound to the provisions in the Universal Declaration of Human Rights (UDHR). The first two articles of the UDHR state that "all human beings are born free and equal in dignity and rights" and that the human rights protected in the UDHR belong to everyone "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."⁴⁰

³⁵ Prasanth Negi, *Affirmative Action in the Private Sector* (2003), p.103.

³⁶ Ramaiah A, *Laws for Dalit Right and Dignity* (2007), p.2.

³⁷ Parkas Louis, "Doors of Durban Conference closed for Dalits" (Mainstream, July 21, 2001), p.27

³⁸ M.A.Kishore, "Dr. B.R. Ambedkar-His Approach Towards Human Rights" (2006), p.211.

³⁹ Marc Gelernter, "Competing Equalities, Law and the Backward Classes in India" (1996), p.20.

⁴⁰ Ian Brownlie, "Basic Documents on Human Rights" (2007), p.234.

The Universal Declaration of Human Rights, 1948 protects the following rights: the right to “life, liberty, and security of person”.⁴¹ The right to be free from torture or cruel, inhuman or degrading treatment or punishment⁴². The right of equality before the law⁴³, the right to effective remedy for the violation of fundamental rights⁴⁴, the right to fair and public hearings⁴⁵, and the right to be free from “arbitrary interference with privacy, family, home or correspondence” and attacks upon a person’s “honour and reputation”.⁴⁶ However, unfortunately, India has still failed to protect Dalits against discrimination, degradation, and violence, India is violating its obligations under the UDHR.

In International perspective, the atrocities, other abuses and humiliations are coming under the purview of violations of International Human Rights Treaties. The Committee on the Elimination of Racial Discrimination (CERD) and the Human Rights Committee (HRC) are the monitoring Bodies under the United Nations. The International Covenant on Civil and Political Rights (ICCPR), World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance on 2000, Prevention of Discrimination and Protection of Indigenous Peoples and Minorities, Prevention of Discrimination Based on Work and Descent, respectively, have expressed concern over the severe social discrimination still practiced against Dalits and other downtrodden communities.

The Preamble of the International Covenant on Civil and Political Rights recognizes the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.⁴⁷

Articles 7,9,14 and 26 of the International Covenant on Civil and Political Rights are of particular relevance. Art.7 prohibits the use of torture, cruel, inhuman or degrading treatment.⁴⁸ The right to liberty and security of person is guaranteed by Art.9 and includes freedom from arbitrary arrest and detention, entitlement to a trial within a reasonable time or to release, and compensation for victims of unlawful arrest or detention. Illegal arrest and detentions are by definition arbitrary. Such acts can also be arbitrary if not in conformity with International standards of human rights and procedural fairness, regardless of specific provisions of domestic law.⁴⁹ Art.14 states that all persons shall be equal before the courts and tribunals. Anyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law⁵⁰. Art.26 prohibits discrimination.⁵¹

Unfortunately, all forms of Untouchability, inhuman and degrading discrimination have been prevailing in India in one form or another. The offences of Untouchability may rightly be categorized as an offence against the human values and humanity. It reduces persons in to mere slaves or chattel who have no civil personality or importance.⁵² Moreover, the factors like the size of the country, its huge population, the massive poverty and the great disparities in the distribution of wealth among various social groups affect the advancement of rights. Therefore, the International Covenant on Civil and Political Rights has got relevance in this context, particularly Art. 26, which prohibits discrimination.

Despite these provisions, the Convention is not self-executing in India. The state should take steps to incorporate fully the provisions of the Covenant in domestic law, so that individuals may invoke them directly before the Courts. Besides, due consideration be given by the authorities to ratifying the Optional Protocol to the Covenant. It is to be noted that despite measures taken by the Government, members of Dalit community as well as the so-called backward classes and ethnic and national minorities continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant, inter alia inter-caste violence, bonded labour and discrimination of all kinds.

⁴¹ Article 3

⁴² Article 5

⁴³ Article 7

⁴⁴ Article 8

⁴⁵ Article 10

⁴⁶ Article 12

⁴⁷ Tandon. M.P, *International Law and Human Rights* (2006) p.136.

⁴⁸ Art.7 of ICCPR- No one shall be subjected to torture as to cruel, inhuman or degrading treatment or punishment. In particular no one shall be subjected without his free consent to medical or scientific experimentation.

⁴⁹ *Supra* n. 4, p.128

⁵⁰ *Id*, p.130

⁵¹ Art. 26 of ICCPR states that all persons are equal before the law and are entitled without any discrimination to the equal protection of law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁵² R.K. Kshirsagar, “*Untouchability in India, Implementation of the law and abolition*” (1986), p.58.

Art. 7 of the International Covenant on Economic, Social and Cultural Rights⁵³ (ICESCR) provides that state parties shall recognize the right of everyone to the enjoyment of just and favorable conditions of work, which includes equal pay for equal work, decent living, safe and healthy working conditions and equal opportunities in promotion.

There is a major difference, which is evident in the formulation of the economic, social and cultural rights as compared with the civil and political rights. The latter are in the form of affirmation of a right inherent in the individual as such whereas the former are in the nature of an undertaking or recognition by states.⁵⁴ These Covenants protect basic human rights and human dignity of the individual especially to the weaker and depressed sections of the world.

Equality is one of the universal principles that recognize every International Instruments and Domestic Law. It is a basic human right and part of civil liberties. It has slowly come to be recognized that racial discrimination and resulting conflict are a major issue in world affairs. That resulted in the adoption of International Convention of Elimination of all forms of Racial Discrimination (CERD).⁵⁵

This convention provides that it is to be identified those descent-based communities under their jurisdiction who suffer from discrimination, especially based on caste and analogous systems of inherited status. and whose existence may be recognized on the basis of various factors, such as inability or restricted ability to alter inherited status; socially enforced restrictions on marriage outside the community; private and public segregation, including in housing and education, access to public spaces, places of worship and public sources of food and water; limitation of freedom to renounce inherited occupation to dehumanizing discourses referring to pollution or Untouchability; and generalized lack of respect for their human dignity and equality.⁵⁶

In pursuant to Art. 9 of the CERD, the Government of India has submitted its consolidated tenth to fourteenth Periodic Reports covering the period from 1986 to 1996 to the CERD, the Committee on CERD affirmed that “the situation of SCs and STs falls within the scope of ICERD.⁵⁷ Art.6 of the Convention provides that state parties shall “assure to everyone within their jurisdiction, effective protection and remedies, through the competent national tribunals and other state institutions. The state parties also has to take effective measures against any act of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals, just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.⁵⁸

There are distinct races and ethnic groups in India. Ethnic aspirations in many parts of India have been a constant feature of Post Independent India. Yet, the Government of India at various forums and United Nations bodies claim that there are no distinct races. Although India aspires to be a secular state, there is no doubt that the Hindu religion plays an important role in popular thinking and perceptions. Untouchability is a punishable offence. There is a large gap between the legal remedies and effectiveness of such legal remedies. The Government of India Report only refers to legal remedies. Nowhere does it indicate the efficacy or effectiveness of such legal remedies.⁵⁹

Succumbing in part to pressure from domestic human rights NGOs and the National Human Rights Commission, India signed the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment on October 14, 1997. The provisions of the Convention will become binding upon its ratification.⁶⁰

The Forced labour Convention 1930, mandate protections that are particularly relevant for bonded laborers. Similarly, the International Labour Organization (ILO) Forced Labour Convention requires signatories to “suppress the use of forced or compulsory labour in all its forms in the shortest period possible. Exploitative forms of Untouchability

⁵³ Art. 7 of International Covenant on Economic, Social and Cultural Rights which ensure, in particular: (a) Remuneration which provides all workers, as a minimum with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant.

(b) Safe and healthy working conditions.

(c) Equal opportunities for everyone to be promoted in his employment to an appropriate higher level, subject to no consideration other than those of seniority and competence.

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

⁵⁴ A.H. Robertson, “*Human Rights in the world*” (1989), p.232.

⁵⁵ *Supra n. 4*, p.148.

⁵⁶ Girish Agarwal and Colin Gonsalves, “*Dalits and the law*” (2005), p. 190.

⁵⁷ Human Rights Watch Report, *Broken Peoples Caste Violence Against India's Untouchables* (1999), p.200.

⁵⁸ *Supra n. 12*

⁵⁹ *Supra n. 13*, p.202.

⁶⁰ *Supra n.13*, p. 203.

may include less or average wages, charging more rate of interests on land grabbing not providing employment and compelling to do forced labour and compelling the untouchable to engage himself in cattle grazing, scavenging and getting the hereditary duties done from them.⁶¹

Therefore, these International Conventions through various provisions helps to uphold India's obligation to protect the weaker sections under the International sphere. Apart from these International measures, there is bulk of legislations in India, in order to combat atrocities and other degrading forms or discrimination.

The British Government of India neglected *Shudras* and untouchables and never thought seriously of taking any constructive and concrete measures for their socio-economic and educational development. To take the fundamental rights of equality meaningful to the *Shudras* and untouchables of Indian society, the founding fathers of Indian Constitution enumerated several provisions in the Constitution of India so that caste disabilities can be removed and they could be brought to the main stream of Indian society.⁶² The legislations include the Constitution, the Protection of Civil Right Act, 1955 and the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995.

CONSTITUTIONAL PROVISIONS

Dr. Ambedkar, architect of India's Constitution is credited with the entire philosophy of Indian Constitution, which revolves around the basic objective that the poorest of the poor is the first charge on resources of the country.⁶³ Pandit Nehru said, "Our final aim can only be classless society with equal economic justice and opportunity to all, a society organized on a planned basis for the raising of mankind to higher material and cultural level". Nehru warned the Constituent Assembly, if one cannot solve this problem soon, all our paper Constitution will become useless and purposeless.⁶⁴

Thus, the first and foremost task of our national character is to weed out poverty, ignorance and inequality of opportunity and wipe tear from every eye⁶⁵. It takes within its sweep the true objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities. The core of the commitment to this aim lies in the Preamble, the Fundamental Rights and Directive Principle of State Policy.

Preamble

The message of the Preamble is to accomplish the goal of socio-economic transformation in a democratic way and that is why the declaration made in the Constitution is that India is a Sovereign Democratic Republic⁶⁶. The Preamble has further declared it resolve to secure certain basic objectives⁶⁷ to all the citizens and the most important place is given to social, economic and political justice. In other words, the Constitution emphatically declares that the Democratic Republic of India shall be a welfare state committed to the pursuit of the idea of social-economic justice.

Fundamental Rights

The Constitution contained a number of provisions for the elimination of the inequities and inequalities prevalent in the Indian society and for promoting equality and social justice.⁶⁸ The Constitution affects social justice in two ways. First, it confers rights on men and women alike, though 'Fundamental Rights' which can be enforced by the Courts. Second, it directs the state to implement "Directive Principles of State Policy". Although these are not enforceable in Indian Courts, they are declared to be fundamental in the governance of the country and as such have moral and political value. In consonance with the above constitutional scheme, the Preamble promise of equality of status and of opportunity has been concretized and clothed with flesh and blood by the provisions of Art. 14 to 17, 19, 21, 23, 25 and 29, read with Arts. 37 to 39, 39 A, 41 to 45 and 46.

⁶¹ *Supra* n. 9,

⁶² T.R. Naval, "Law of Prevention of Atrocities on the Scheduled Caste and Scheduled Tribes" (2001), p.16.

⁶³ *Krishnan v. State of Orissa*, AIR 1990 SC 678.

⁶⁴ Granville Austin, "Indian Constitution Corner Stone of a Nation" (1960), p.27.

⁶⁵ *Id.*, p. 26.

⁶⁶ After the 42nd Amendment it reads " we the people of India have solemnly resolved to constitute India in to 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.

⁶⁷ The basic objective enshrined in the preamble are (a) to constitute India in to a Sovereign, socialist secular Democratic Republic (b) to secure all its citizens justice, social, economic and political liberty of thought, expression, belief, faith and worship, equality of status and opportunity (c) to promote among them all the dignity of individual and (d) unity and integrity of India. See also D.D. Basu Shorter Constitution of India (13th ed.), p. 2001.

⁶⁸ P.S. Krishnan, Welfare of Backward Classes in Dr. S. Subramanian (ed.), *Fifty Years of India's Independence* (1997), p.217.

Art. 14⁶⁹ guarantee the principle of equality in general terms. This is exemplified and particularized in Art. 15 and 16. It has been rightly held that “Art. 14 is the genus of the guarantee of equality of which Arts. 15 and 16 are the species”.⁷⁰ Art. 14, which have to be interpreted in the light of Arts.38 and 46, seem to enjoin the State to ensure substantive or factual equality. Accordingly, these provisions confer on the statewide latitude to provide for protective discriminatory measures with minimum of judicial interference. The permissible scrutiny under Art. 14 are confined to the ascertainment of the reasonableness of the impugned legislative classification on the anvil of the well-established two- fold test.

1. Classification must be founded on an *intelligible differentia* which distinguishes persons or things that are grouped together from the others left out of the groups; and

2. The *differentia* must have a rational relation to the object sought to be achieved by the Statute in question.⁷¹

Art. 15 (2) also provides certain safeguards.⁷² Here protection has been given from disabilities on grounds of religion, race caste, sex or place of birth.

Special provision for Backward Classes also dealt within the Constitution. The object of this clause, added in 1951, is to bring Arts. 15 and 29 in line with Art.16 (4), 46 and 340, and to make it constitutional for the state to reserve seats for the Backward Classes of citizens, SCs and STs, in the public educational institutions, as well as to make other special provisions as may be necessary for their advancement. The immediate object of this amendment was to override the decision in *State of Madras v. Chempakam Dorairajan*,⁷³ to the effect that Art. 29 (2) is not controlled by Art.46 and that the Constitution does not intend to protect the interest of the Backward Classes in the matter of admission to educational institutions.⁷⁴ There are Equality of opportunity in the matter of public employment at the same time.⁷⁵

Untouchability is abolished under Art. 17⁷⁶. This was inserted in the Constitution in order to protect the lower classes from the clutches of Untouchability. But the term has not defined. While discussing on the provision of the said Article some of the members of the Constituent Assembly expressed their opinion that the term Untouchability requires clarification. *Mr. K.M. Munshi* in his attempt to clarify the term in question said that “The word Untouchability is put properly within inverted commas in order to indicate that the when Union Legislature defines Untouchability it will be able to deal with it in the sense in which it is normally understood”.⁷⁷

Thus, the Constituent Assembly left the matter on the Central Legislature to define it. In its broader scope, each form of Untouchability is a forbidden act. Art. 19 provide certain freedoms.⁷⁸ Art. 21 provide protection of life and

⁶⁹ See D. D Basu, “*Shorter Constitution of India*” (13th ed. 2001) Art. 14 states that the State shall not deny to any person equality before the law of the equal protection of the laws within the territory of India.

⁷⁰ *State of Kerala v. N. M. Thomas*, AIR 1976 SC 490.

⁷¹ *Ramakrishna Dalmia v. S.R. Tandolkar*, AIR 1958 SC 478

⁷² Art 15 (2) provides that :No citizen shall, on grounds only of religion race, caste, sex place of birth or any of them, be subject to any disability, liability restriction or condition with regard to:(a) access to shops, public restaurants, hotels and places of public entertainment, or (b) the use of wells, tanks, bathing ghats, roads and places of resort maintained wholly or partly out state funds or dedicated to the use of the general public.

⁷³ AIR 1951 SC 226

⁷⁴ See Art. 15 (1)

⁷⁵ Art. 16 (1) There shall be equality of opportunity for all citizens in matters relation to employment or appointment to any office under the state.

(2) No citizen shall, on grounds only of religion, race, caste, ineligible for, or discriminated against In respect of , any employment or office under the state.

(3) Nothing in this Article shall prevent Parliament from making any law prescribing, in regard to class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a state or Union territory prior to such employment of appointment.

(4) Nothing in this Article shall prevent the state form making any provision for the reservation of appointments or posts in favour of any Backward Class of citizen which, in the opinion of the state, is not adequately represented in the services under the state.

(4A) Nothing in this Article shall prevent the state form making any provision for reservation in matters of promotion to any classes or classes or posts in the services under the state in favour of the SCs and STs which, in the opinion of the state, are not adequately represented in the services under the state.

⁷⁶ “Untouchability” is abolished and its practices in any form are forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.

⁷⁷ Constituent Assembly Debates, Vol. III p.413

⁷⁸ Art. 19 says that All citizen shall have the right to:

- (a) Freedom of Speech and Expression
- (b) To Assemble Peaceably and without Arms
- (c) To form Associations or unions

personal liberty.⁷⁹ Art. 23 prohibit trafficking in human beings and forced labour⁸⁰. Art.24 provides that no child under the age of fourteen shall work in any factory or mine or engage in any hazardous employment. A majority of children engaged in bonded labour in such hazardous industries are SC members. Art.25 provides right to freedom of religion. Art.29 (2) forbid person in charge of any educational institution...receiving aid out of state funds to deny admission to an applicant on grounds only of religion, race, caste, language or any of them.

Directive Principles of State Policy

In the Directive Principles, there are clearer commitment of ending of poverty, ignorance and inequality of opportunity.⁸¹ The essence of Directive principles lies in Art.38, which echoing the Preamble reads: the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life. To foster this goal, Directive principles exhort the state to ensure that citizens have an adequate means of livelihood.⁸² That the operation of economic system and the ownership and the control of material resources of the country sub serve the common good,⁸³ that the health of the workers, including children is not abused,⁸⁴ that children are not forced by the economic necessity to enter avocations unsuited to their age or strength⁸⁵ and that children are given opportunities and facilities to develop in healthy manner and in conditions of freedom and dignity and their childhood and youth are protected against exploitation.⁸⁶

Art. 43 calls on the state to secure to all workers, agricultural, industrial, or otherwise, a living wage and conditions of work ensuring and decent standard of life. Art. 45 charges that the state shall endeavor to provide free and compulsory education for all children until they reach the age of fourteen.

Art.46 comprised both development and regulatory aspects and stipulates that: “the state shall promote with special care the educational and economic interests of the weaker sections of the people, and in particular, of the SCs and STs, and shall protect them from social injustice and forms of exploitation.”

The founding fathers of the Constitution have made it the responsibility of future Indian Government to find a middle way between individual liberty and the privileges of the few and bestowing benefits on the many in order to liberate the powers of all men equally for contribution to the common good and accomplish the constitutional dream of abridging the gap between the rich and the poor. The irony of fate however is that although India has completed 60 years of experiment with the national character, in a strong hope of weeding out the gap between rich and the poor, yet the hope has remained unfulfilled.

Other Provisions

Art.330 and 332 provides for reservation of seats for the members of the SCs and STs in Parliament and in Legislative Assemblies of the states. Art.335 enables the reservation in appointments in services and posts under the Government for the SCs and STs. Art.338 envisaged initially a special officer and later, after the amendment in 1990, the setting up of a National Commission for the admission of SCs and STs. Art.339 provides for the establishment of a Commission of the administration of the scheduled areas and the welfare of the STs from time to time. Special provisions were also incorporated in the Constitution in regard to the administration of the tribal areas included in the 5th Scheduled of the Constitution. More recently part IX and IXA of the Constitution based on the 73rd and 74th amendments have, among other things, provide for the reservation of seats and posts of chairpersons in *panchayaths* at all levels and the urban local bodies in favour of the SCs and STs. These are some of the important constitutional provisions in order to protect the SCs and STs from wide spread atrocities and crimes.

Protection of Civil Rights Act, 1955

In exercise of power enumerated in part II of Art.17 and Art.35 (a) (ii) of the Constitution of India the Untouchability (offences) Act, 1955 was enacted for giving effect to epoch-making declaration of abolition of

(d) To move freely throughout the territory of India

(e) To reside and settle in any part of the territory of India, and

(f) To participate any Profession or to carry on any Occupation Trade or Business.

⁷⁹ Art. 21, No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁸⁰ Art 23 (1) Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

⁸¹ Chitkara M.G, *Dr. Ambedkar towards Buddhism* (1997), p.195.

⁸² Art. 39 (a)

⁸³ Art.39 (b)

⁸⁴ Art.39 (e)

⁸⁵ *Ibid*

⁸⁶ Art.39 (f)

untouchability and practice of untouchability in any form. The enforcement of any disability arising of Untouchability shall be an offence punishable under various sections of Untouchability (Offences) Act. The Untouchability (Offences) Act out laws the enforcement of disabilities “ on the ground of Untouchability” in regard to, inter alia, entrance and worship at temples, access to shops and restaurants, the practices of occupations and trades, use of water sources, places or public resort and accommodation, in public conveyances, hospitals, educational institutions, construction and occupation of residential premises, holding of religious ceremonies and processions, use of jewelry and finery.⁸⁷

It was also provided that what so ever will take any part in the ex-communication of, or imposition of any social disability on any person who refuses to practices Untouchability or does any act to defeat the objects of Untouchability (Offences) Act, will also be guilty of the offence, in addition to the normal penalty for an offence, it was provided that the court may also cancel or suspend any license in respect of profession, trade, calling or employment, when an offence is committed under this law within the course of any such profession, trade calling or employment.⁸⁸

However, these social legislations had certain merits in arresting the practice of Untouchability, it failed to make a significant impact on the society. It had certain inherent constraints and deficiencies. The offences were non-cognizable, non-bailable, but compoundable. There was no separate machinery to be in charge and the scope was limited.

Although Untouchability was abolished by Art.17 of the Constitution, the Untouchability (Offences) Act 1955 was passed by parliament to make the practices of Untouchability as a cognizable offence. Yet during the working of the Act, it was noticed that there were some lacuna in the provisions and that these loopholes needed to be plugged. In April 1965, the Government of India appointed the Committee on Untouchability under the Chairmanship of Shri. L. Elavaperumal to examine, inter alia the problem of Untouchability vis-à-vis the working the Untouchability (Offences) Act, 1955 and to make recommendations to the Government for amendments to the Act. The committee submitted its report in January 1969 in which it made certain recommendations with a view to plug the loopholes and to make the penal provisions more stringent. To give effect to some of the recommendation made by the said committee, the Untouchability (Offences) Act was amended in 1976 as “Protection of Civil Rights Act”.⁸⁹

Untouchability was made a cognizable and non-compoundable offences and a minimum punishment was stipulated for enforcing the religious, social and other disabilities. A centrally sponsored scheme of strengthening the machinery for implementation of the PCR Act was introduced under which the states are provided with financial assistance for the purpose.⁹⁰

The Provision of the PCR Act and the Constitution of India seek to serve three fold purposes. (1) outlawed the disabilities to which Dalits are subjected to (2) these are made an offence under the Act; and (3) provided rights to enforce these as civil rights. Untouchability is the root cause and consequently any religious, social, customary or moral grounds to enforce Untouchability no longer subsists nor valid after January 26, 1950. Enforcement of any disability is a crime against human rights and the Constitution entails the wrong doer with punishment. All customs, usages and practices directly or indirectly recognizing or encouraging the practice of Untouchability in any form is void, being opposed to public policy. Even a contract, covenant or any private transaction tending to recognize, encourages or effectuate Untouchability in any form is, therefore, void *ab initio*.⁹¹ The greatest deficiency of the Protection of Civil Right Act was the fact that abuses against Dalits were not limited to name-calling or denial of entry into public places, violence was a defining characteristic of the abuse.

Prevention of Atrocities through the Scheduled Caste and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Scheduled Castes and Schedules Tribes Prevention of Atrocities Act of 1989 (1989 Act) also provides a wide range of protections for Dalits. Despite various measures to improve the socio-economic conditions of the Dalits, they remain vulnerable. They are denied number of civil rights. They are subjected to various offence, indignities,

⁸⁷ Adele Fiske, “Scheduled Caste Budhist Organisation” in J. Michael Mahar (ed) *The Untouchables in Contemporary India* (1998), p.242.

⁸⁸ See Statement of Object and Reasons of Untouchability (Offences) Act, 1955

⁸⁹ *Supra* n, 19, p. 22.

⁹⁰ *Supra* n.25, p. 224.

⁹¹ *State of Karnataka v Appa Balu Ingale and others*, AIR 193 SC 1126, 1129.

humiliations and harassment. They have, in several brutal incidents been deprived of this life and property. Serious crimes are committed against them from various historical, social and economic reasons.⁹²

Under the circumstances, the existing laws like the Protection of Civil Right Act, 1955 and the normal provisions of the Indian Penal Code have been found inadequate to check these crimes. A special legislation to check and deter crimes against them committed by non-SCs and non-STs has, therefore become necessary. Consequently, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 was passed which came in to force on January 30, 1990.⁹³

Salient Features of the Act

This document outlaws offenses such as forcing Dalits to “drink or eat any inedible or obnoxious substance,” to remove their clothes or parade around naked, or to become bonded labourers.⁹⁴ In addition, the Act provides punishment for public servants who fail to enforce the protections set forth in the Act. The anti-atrocities law also provides for the establishment of the special court for the speedy trial of offences of atrocities.⁹⁵ The Act also provides appointment of the special public prosecutor⁹⁶, stipulates enhanced punishment for subsequent conviction under the Act.⁹⁷ The 1989 Act also protects Dalits from false lawsuits, sexual exploitation, and interference with their voting and property rights. The Violators of the 1989 Act are subject to fees and imprisonment, while repeat offenders are supposed to serve at least one year for each offense. The Act makes a non-scheduled caste ‘public servant’ criminally responsible for his willful neglect of his duties required under this Act⁹⁸, denies to the accused the statutory anticipatory bail⁹⁹, and disentitles a convict (above 18 years of age) for his release on probation.¹⁰⁰ Under the anti-atrocities law the state government is made responsible to take adequate measures regarding facilities like legal aid to provide them representation, traveling and maintenance expenses including the victim of atrocities¹⁰¹, provision regarding economic and social rehabilitation of the victims of atrocities etc.

Since Independence, a variety of initiatives has been undertaken by the state for the socio-economic development of the SCs and STs. They include an array of constitutional commitments, enactment of special legislations, reservations in public employment and in elected representative bodies, planned development programs, budgetary allocations and generally high priority in all governmental programs.¹⁰² The Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Rules of 1995 further delineate procedures for state governments to take toward investigation, prosecution, and punishment pursuant to the 1989 Act

The Protection of Civil Rights Act 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are special legislations for social protection of the Dalits. In addition to these special enactments, there are also other protective measures of special relevance to the SCs and STs such as the Minimum Wages Act, 1948, The Bonded Labour System (Abolition) Act 1976 and the Child Labour (Prohibition and Regulation) Act, 1986.etc.

Several other areas of India’s domestic law theoretically both protect Dalits from caste discrimination and help to promote the socioeconomic status of Dalits. For instance, the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act of 1993 (1993 Act) prohibits the employment of manual scavengers in the interest of human dignity and public health. Additionally, the 1993 Act bans the use of dry latrines, which require manual scavengers to remove human waste. The 1993 Act applies to the states of Andhra Pradesh, Goa, Karnataka, Maharashtra, Tripura, and West Bengal, and if enforced, has potential to end the degrading and exploitative practice of manual scavenging.

LATEST AMENDMENT IN SCHEDULED CASTE AND SCHEDULED TRIBE (PREVENTION OF ATROCITIES) ACT 1989

On September 11, 2013, The Union Cabinet decided to make an amendment in the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and make penal provisions extremely tough to deter people committing

⁹² Statement of Objects and Reasons of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

⁹³ Act. No.33 of 1989

⁹⁴ Section 3 of the Act provides number of acts, which constitute atrocities against Dalits.

⁹⁵ S.14

⁹⁶ S.15

⁹⁷ S.5

⁹⁸ S.4

⁹⁹ S.18

¹⁰⁰ S.19

¹⁰¹ S.21

¹⁰² *Supra* n.49, p. 221

crime against the SC/ST community. The draft accessed proposes that common crimes like rape, assault and kidnapping should also be brought under the purview of this act. Most of these crimes invite punishment of less than 10 years but with amendments, crimes like these will invite punishment for more than 10 years. As of now, they are covered under IPC and offenders get away with light sentencing despite causing grave trauma and injury to the victim.¹⁰³ The amendments also define new crimes and add some to the list. As per the draft, obstructing use of common property, allegations of witchcraft, preventing entry in place of worship, social economic boycott and promoting enmity are few of the changes, which have been added to the list. Above-mentioned crimes will now be considered as cruelty against Dalit community.

The new law also defines certain other acts as criminal and includes them in SC/ST framework. As of now, they are covered under the IPC laws. The new list includes cutting of moustache, throwing of waste in front of SC ST Household, disrobing a person, parading him naked, denial of use of land and water, destruction of crop and denial of forest rights. The list also focuses on crime against women. It would include voyeurism, throwing of acid, stalking etc

The amendments would also provide setting up for special courts and rights if witnesses and victims will also be elaborated. In certain cases, the courts the accused will have to prove his innocence. The proposal also makes provisions against civil servants strict. In cases where civil servants conduct is found wanting then he can be booked after an administrative enquiry. Sources said that this would ensure that cases are properly registered and acted upon by the civil and police authorities at the local level.¹⁰⁴

Centre felt that crime against the SC and ST was not coming down and conviction rates too were disappointing requiring serious intervention. Sources said the attempt of the government is to ensure that regular crimes, which take place against the tribals and Dalits, too should be covered by the amendments so that the deterrence can be increased. The proposal has also envisaged improving institutional framework of the law and has tried to ensure that crimes against SC and ST can be prevented. The amendments will not only make punishment for existing crimes tougher but new addition of new crimes to the list is expected to reduce cruelty against the SC/ ST community. While the proposals being contemplated are welcome, the point worth deliberating is whether the main problem in curbing atrocities against dalits and tribals is the lacunae in laws or something else.

Conclusion and suggestions

Despite living in a country where rich civil rights history has inspired freedom movements around the world, many of India's 210 million Dalits, or "Untouchables," still suffer from egregious caste discrimination. In addition to being targets of physical and sexual violence, Dalits are often required to eat and drink from separate containers in restaurants, attend separate religious services, walk miles to get water, and work in degrading conditions. Although Indian law contains extensive protections against such caste discrimination, the government still fails to enforce its domestic and international obligations to ensure Dalit rights.

The caste-based atrocities are persisting in the world's largest democracy despite the legal safeguards, and the human rights of this group are under a cloud of danger, which quite often burst upon them making them vulnerable and denying them their right to be human. The caste-based discrimination is comfortably taking breath in a hierarchical society ruled by the principle of graded inequality thus challenging the constitutional mandate to establishing an egalitarian social order. The effective implementation of the anti-atrocities laws, improper reporting of atrocities cases along with the inherent vested interests in maintaining the caste discrimination are the reasons for the perpetuating atrocities.

Improper investigation in atrocities cases results in low conviction rates. The low rate of conviction is the result of varying factors like caste bias of the prosecutors as well as other organs of justice, including the judiciary and the law enforcement machinery's lack of familiarity with the provision of the relevant legislation. A check on the law enforcement machinery in this regard is much needed and requires legal scrutiny.

The uncivil nature of civil society presents before us a unique challenge where the need then becomes to rise above a mere discourse on civil and constitutional rights and address the failure of the largest democracy of the world to go beyond mere form. We have to appreciate that it concerns the greater hiatus that exists between constitutional principles and corresponding ethical ones and practice. Following are some of the suggestions to curb the menace of atrocities against dalits.

¹⁰³ *The Hindu*, September 11, 2013.

¹⁰⁴ <http://indiatoday.intoday.in/story/centre-all-set-to-amend-sc-st-act-punishment-to-get-tougher/1/309328.html> (Accessed on 02-01-2014).

1. Adequate steps must be taken to effectively implement in anti-atrocities law and to remove the flaws in it. The Special Courts to be constituted under the Act must be given the power to take cognizance of cases as a court of original jurisdiction for speedy trial of atrocities cases.

2. The National Commission for Scheduled castes must be provided with strong investigation and legal wing to investigate cases and made research and be provided with adequate budgetary funds to facilitate the tasks of the Commission.

3. Endogamy is the peculiar features of the caste system in India and a hindrance in bringing out change in the mindset of the upper caste people. Inter-caste marriages may help in bringing change in the outlook of the society so the government must encourage inter-caste marriage.

4. Poverty and economic dependence of the scheduled caste on the upper caste are the major factors for growing atrocities. Though affirmative measures have not reached to the needy, the economic empowerment of the scheduled castes is a tool to minimize the incidents of atrocities as the economic dependence makes the scheduled castes vulnerable to atrocities. So the need is to implement the economic measures in the true spirit for uplifting the scheduled castes.

5. The law must play a role in changing the status of the scheduled castes in the society and must prevent these atrocities as these atrocities stuck at the very base of human rights that is human dignity and thus denies to a large segment of the society the rights to be human. The international community also must recognize the caste based discrimination as a human rights issue and this problem must be tackled at the international level and the India must abandon its hard stands which does not have any rationale behind it.

6. Legislating a secular civil law so that the Hindu law with its caste system will not be arbitrarily applied on peoples who don't practice the Hindu religion (Sanathan Dharma). (Currently the Hindu religious label and Hindu law is arbitrarily slapped legally on one and all except Muslims, Christians, Jews and Zoroastrians with scant regard for freedom of religion, thought and expression).

7. Legislating and enforcing strong Human Rights and Civil Rights laws that will prevent atrocities and vigorously punish those who indulge in atrocities against Dalits

8. Banning all physical segregation of Dalits in the form of colonies or slums. All caste descent based occupations should be banned and criminalised.

9. Instituting an aggressive national housing policy to create integrated housing for all urban and rural dwellers of segregated colonies and slums, and these colonies should exist in the middle of the village, town or city and should not be physically segregated.

10. Affirmative action for Dalits should be enforced on the basis of certifying their Dalit Dravidian descent, and should not be based on any individual caste identity of Dalits

11. A standardised, universal and mandatory access to health, education, housing, sanitation, human rights and material security should be instituted on the lines of Western European welfare states.