

# **UNTOUCHABILITY LEGISLATION IN INDIA AND THEIR EFFECT IN BRINGING ABOUT SOCIAL CHANGE**

**SUBAS.H.MAHTO**

**ROLLNO-09**

**SEM-II**

**LAW AND SOCIAL CHANGE**

**FYLLM**

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## **CHAPTER I INTRODUCTION**

Untouchability, an ancient form of discrimination based upon caste, is a complex and pervasive problem within India, although its practice is not limited to India alone. For millennia, the practice of untouchability has marginalized, terrorized, and relegated a sector of Indian society to a life marked by violence, humiliation, and indignity. The discrimination is so pervasive that many Dalits come to believe that they are responsible for their own suffering and exclusion, internalizing the beliefs that perpetuate the practice of untouchability. As India emerges as the world's largest democracy and one of the largest and most developed economies, the practice of caste discrimination remains in stark contrast to the image of progress, which the Government of India seeks to promote within the international community. Thus, like a shameful secret, a "hidden apartheid," untouchability remains an extremely sensitive issue within India. Its practice is never fully defined, never fully explored and, thus, never fully understood. What is known is that untouchability is:

1. A lived experience of all people in India – either as survivors and challengers (approximately 164.8 million Dalits) or as beneficiaries, perpetrators, bystanders and witnesses (approximately 862.2 million non-Dalits);
2. Sanctioned by the dominant religion in India, Hinduism, in its most important texts (e.g., the Vedas and Manusmriti), but in practice, all major religions in India participate in the

perpetuation of untouchability;

3. Abolished and its practice prohibited by the Constitution of India, as well as by some of the most important legislation in India (the Protection of Civil Rights Act, 1976 and the

Prevention of Atrocity Act, 1989); and,

4. One of the most divisive issues in the country's history, bringing into conflict two of the most important political leaders in the history of India – Mohandas K. Gandhi and Dr. Bhimrao Ambedkar.

Since the United Nations World Conference against Racism held in Durban, South Africa in 2001, caste-based untouchability has become an extremely important issue outside of India as well. Dalit and human rights organizations have raised awareness of the topic, trying to shed light on the daily abuse and atrocities suffered. Due in large part to the effective advocacy of these organizations, the United Nations has consistently raised concerns that the Government of India may be falling short of its international legal obligations in the face of the continued practice of untouchability and the *de facto* discrimination that exists alongside it.

Despite the growing domestic and international concern over untouchability, a Constitutional prohibition against its practice, laws that implement this constitutional prohibition, and international human rights protections, the daily lived experience of many Dalits seems unchanged. The discriminatory regime of untouchability remains in place. This study seeks to better understand untouchability, with the belief that only a better understanding of the problem will lead to the true abolition of the practice.

## **What is untouchability?**

Untouchability is a direct product of the caste system. It is not merely the inability to touch a human being of a certain caste or sub-caste. It is an attitude on the part of a whole group of people that relates to a deeper psychological process of thought and belief, invisible to the naked eye, translated into various physical acts and behaviours, norms and practices.

Untouchability is the product of casteism and the belief in purity of so called upper castes. It is generally taken for granted that Dalits are considered polluted people at the lowest end of the caste order. All the menial tasks were to be done by the low caste, like removing human waste (known as “manual scavenging”), dragging away and skinning animal carcasses, tanning leather, making and fixing shoes. They are supposed to reside outside the village so that their physical presence does not pollute the “real” village. They are restricted in terms of space and their houses were to be of inferior quality and devoid of any facilities like water and electricity.

## **Who are Dalits?**

The word “Dalit” comes from the Sanskrit root dal- and means “broken, ground-down, downtrodden, or oppressed.” Those previously known as Untouchables, Depressed Classes, and Harijans are today increasingly adopting the term “Dalit” as a name for themselves. “Dalit” refers to one’s caste rather than class; it applies to members of those menial castes which have born the stigma of “untouchability” because of the extreme impurity and pollution connected with their traditional occupations. Dalits are ‘outcastes’ falling outside the traditional four-fold caste system consisting of the hereditary Brahmin, Kshatriya, Vaishya, and Shudra classes; they are considered impure and polluting and are therefore physically and socially excluded and isolated from the rest of society.

Dalits represent a community of 170 million in India, constituting 17% of the population. One out of every six Indians is Dalit, yet due to their caste identity Dalits regularly face discrimination and violence which prevent them from enjoying the basic human rights and dignity promised to all citizens of India. Caste-based social organization extends beyond India, finding corollaries in Nepal, Pakistan, Sri Lanka, and Bangladesh, as well as other countries outside of South Asia. More than 260 million people worldwide suffer from this “hidden apartheid” of segregation, exclusion, and discrimination.<sup>1</sup>

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<sup>1</sup> : <http://www.ukessays.com/essays/sociology/the-problems-of-untouchability-in-india-sociology-essay>.

## **CHAPTER II UNTOUCHABILITY IN INDIA**

When the constitution of India outlawed untouchability in 1950 many national leaders believed that a centuries old practice had been brought to an end. But now nearly 60 years later there is no total success of the statutory measure. Millions of Dalits across the country who account for roughly 1/5th of the population continue to suffer birth-based discrimination and humiliation. In states like Tamil Nadu which boasts a long history of reformist movements is no exception. Infact untouchability has not only survived the constitutional ban but taken new avatars in many parts of the state. Caste-based discrimination has often led to violence, leaving hundreds of the disadvantaged people in distress particularly in the 1990s.

Over 80 forms of untouchability have been identified, many of which are apparently free India's additions to the list. From time immemorial Dalits have been deprived of their right to education and the right to possess land and other forms of property. Left with nothing but their physical labor to earn their livelihood they have all along been forced to do the toughest and most menial jobs for survival.

Apart from the denial of access to public roads, tanks, temples and burial/cremation grounds there are other forms of untouchability. Segregation of Dalits is seen almost everywhere in

Tamil Naidu's villages. But nothing can perhaps beat the high wall 500 meters long that has been built at Uthapuram in Madurai district as a barrier between Dalits and caste Hindus.

While untouchability is still rampant and is taking new forms particularly in villages, the constitutional ban and compulsions of modernity and development have to some extent blunted its rigor. Rail transport has been unifying forces in society. Yet the Railways have been among the worst offenders in respect of the law against manual scavenging. Dalits constitute a significant portion of its workforce of manual scavengers along railway lines.

Although all state governments claim that they have abolished manual scavenging reports reveal that this practice is very much alive in many places. Postmen have also been found to practice untouchability. A study conducted in Tamil Nadu noted that in two villages in Madurai district postmen did not deliver postal articles to Dalit addressees. Dalits were required to collect the articles at the post office. There are also road transport related violations of the law against untouchability. Among them is the unwritten rule that gives caste Hindus priority over Dalits in boarding buses in many areas, buses not stopping in Dalit areas, transport employees picking quarrels with Dalit passengers without provocation and Dalits not being allowed to use bus shelters. State government still follows a traditional procedure of making announcements in villages by beating a drum and for that they deploy Dalits.

Worse still are the roles of schools and teachers in perpetuating untouchability and sowing the seeds of caste-related discrimination in young minds. The Dalit children are often discouraged by teachers and fellow students belonging to caste Hindu social groups. In many schools Dalit pupils were not allowed to share water with caste Hindus. To punish an erring or naughty Dalit boy teachers scold him by calling him by his caste name. If the teacher

decides that the boy needed a beating as punishment the task was assigned to another Dalit boy. There is also systematic refusal of admission to Dalits in certain schools particularly at the plus two levels.

In some villages during the temple festivals Dalits are supposed to stay hidden from caste Hindus. The two-tumbler system under which Dalits and non-Dalits are served tea in different vessels is still prevalent in some teashops. In some eateries they are compelled to sit on the floor.

## **2.1 Untouchability and discrimination**

In the name of untouchability, Dalits have faced work and descent-based discrimination at the hands of the dominant castes. Instances of this discrimination at different places and times included:<sup>[2]</sup>

- Prohibition from eating with other caste members
- Provision of separate cups in village tea stalls
- Separate seating arrangements and utensils in restaurants
- Segregation in seating and food arrangements in village functions and festivals
- Prohibition from entering into village temples
- Prohibition from wearing sandals or holding umbrellas in front of higher caste members
- Prohibition from entering other caste homes
- Prohibition from riding a bicycle inside the village
- Prohibition from using common village path
- Separate burial grounds

- No access to village's common/public properties and resources (wells, ponds, temples, etc.)
- Segregation (separate seating area) of children in schools
- Bonded labour
- Social boycotts by other castes for refusing to perform their "duties"

**Even after more than 50 years of Independence India still has the world's largest number of poor people in a single country.** It is estimated that 1 in every 3 Indians lived in what could be categorized as absolute poverty—a total of 310 million people. Those especially vulnerable throughout India continue to be rural women, the disabled, and people of lower castes – especially the Dalits or "Untouchables." To be born a Hindu in India is to enter the caste system, one of the world's longest surviving forms of social stratification. **Embedded in Indian culture for the past 1,500 years, the caste system follows a basic precept: All people are created unequal.** The ranks of Hindu society come from a legend in which the main groupings, or *varnas*, emerge from a primordial being. From the mouth come the Brahmins—the priests and teachers. From the arms come the Kshatriyas—the rulers and soldiers. From the thighs come the Vaisyas—merchants and traders. From the feet come the Sudras—laborers. Each varna in turn contains hundreds of hereditary castes and subcastes with their own pecking orders. **A fifth group describes the people who are untouchable—the primordial being does not claim them. Untouchables are outcastes—people considered too impure and polluted to rank as worthy beings.** Discrimination against India's lowest Hindu castes is technically illegal. But try telling that to the 250 million Dalit people (nearly ¼ of India's society) who face violent reprisals if they forget their place. **The term "Dalit" means "those who have been broken and ground down deliberately by those above them in the social hierarchy."** Dalits live at risk of discrimination, dehumanization, violence, and enslavement through human trafficking every day.

Prejudice defines their lives as everyday they are shunned, insulted, banned from temples and higher caste homes, made to eat and drink from separate utensils in public places and too often raped and murdered.

## **2.2 Indian Law: Discrimination against Dalits is Social, Not Legal**

While there are beliefs that are rampantly propagated about Dalits in India being considered as the lowest in the caste system, the Constitution of India provides them with the right to equality. The society considers a person belonging to a Dalit community as being polluted by the society.

The Dalits are supposedly meant to do only jobs that are ‘impure’ such as clear human waste from villages and wash clothes and make shoes. In villages and cities, the herd mentality of following the caste system continues.

The Dalit children face discrimination even in schools. They are made to clean the toilets and eat separately. Offensive names are given to Dalit children such as Kachro (filth), Melo (dirty), Ghelo (stupid) and so on. Though Dalits are considered as social untouchables, the women in their community are not. Since time immemorial, Dalit women have been raped, sexually harassed and perceived as objects to be used and discarded, even by the police.

However, the Constitution of India provides reservation for the Dalits in the sphere of education and government jobs to ensure they are given an equal opportunity to grow and prosper in this country. The country’s highest positions such as that of the former President (K.R. Narayanan) and former Chief Justice of India (K.G. Balakrishnan) have been occupied by highly eminent individuals who happened to be Dalits.

Constitutional Provision:

The very basis of the administration that is the Constitution of India does not tolerate such discrimination. Its whole structure is based on treating all citizen of this country at par. Paragraphs 15 and 16 and 17 categorically make provisions in this regard. The text of these paragraphs is reproduced below:

**Paragraph 15 of the Constitution of India:**

- 1) The State shall not discriminate against any citizen on grounds only of religion, caste, sex, place of birth or any of them.
- 2) No citizen shall on grounds only of religion, race, caste, sex, place of birth or any of them, be subjects to any disability, liability, restriction 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 public resort maintained wholly or partly out of State funds dedicated to the use of the general public.

**Paragraph 16 of the constitution of India:**

- 1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.
- 2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be 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 a class or classes of employment or appointment to any office under the Government of, or any local or other authority within a State or Union Territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment."

**Paragraph 17:**

“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.”

**Eradication of untouchability according to the Directive Principles of the State Policy as laid down in the Constitution of India:**

The directive principles of the state policy laid down in the Constitution of India categorically rule against untouchability. The provisions in this regard are being reproduced below to make clear the effects made by the Government for eradication of untouchability.

**Directive against untouchability as contained in chapter XVI of the Constitutional of India:**

The Government will develop the economic and educational interest of the weakest classes, especially Scheduled Castes with special protections and will protect them from social injustice and all forms of exploitation.”

Provisions for eradication of untouchability as embodied in Article-46 of the Constitution of India: the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation”

Article 146 provides that in the States of Bihar, Madhya Pradesh and Orissa there shall be a Minister in charge of Tribal Welfare who may in addition be in charge of the welfare of the Scheduled Castes and backward classes or any other work.”

Article 330 makes provision for the reservation of seats for the people of Scheduled Castes, Tribes etc, and provisions of the Article in this respect reads as follows:

**1) Seats shall be reserved in the House of the People for:**

a) The Scheduled Castes; b) The Scheduled Tribes except the Scheduled Tribes in the tribal areas of Assam and in Nagaland, and c) The Scheduled Tribes in the autonomous districts of Assam.

**2) The number of seats reserved in any State or Union Territory for the Scheduled Castes or the Scheduled Tribes under clause 1) Shall bear, as nearly as may be the same proportion in the total number of seats allotted to that State or Union Territory in the House of the people as the population of Scheduled tribes in the State or Union Territory or part of the State or Union Territory in the House of the people as the population of the Scheduled Tribes in the State or Union Territory or part of the State or Union Territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the State or Union Territory.**

**Reservation in appointments, in order to remove the untouchability:**

The constitution has also made provision for reservation of seats in service or appointment. Articles 335 and 338 of the constitution of India provisions in this regard. The provision of the Constitution is reproduced below:

**Article 335:** The claims of the members of the Scheduled castes and the Scheduled tribes shall be taken into consideration consistently with the maintenance of efficiency of administration in making of appointments to services and posts in connection with the affairs of the union or of a State.'

**Article 338 has something similar to say:**

- 1) There shall be a Special Officer for the Scheduled Castes and Scheduled Tribes to be appointed by the President.
- 2) It shall be the duty of the Special Officer to investigate all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under this constitution and report to the President upon the working of those safeguards at such intervals as the President may direct, and the President shall cause all such reports to be laid before the Parliament.”

**Commission for enquiring the conditions of the members of the Scheduled Castes, Scheduled Tribes etc.:**

The constitution had made provisions for appointment of the Commission to study the conditions of the Scheduled Castes and Scheduled Tribes. Article 340 1) has made very clear cut provisions in this regard:

“The President may be order appoint a Commission consisting of such persons as he thinks fit to investigate the conditions of socially and educationally backward classes within the territory of India and the difficulties under which they labour and to make recommendations to the steps that should be taken by the Union or any State to remove such difficulties and to improve their condition and as to the grants that should be made for the purpose by the Union or any state and other appointing such Commission shall define the procedure to be followed by the commission.

**2) Enactment and measures for improving the condition of the members of the Scheduled Castes for eradicating untouchability:**

Our modern society is very much governed by economic factors. If the members of a particular society are economically well off, they shall not be looked down by members of the other communities. The Government of Indian had therefore felt two basic things to perform. The first

thing was to make enactments and enact legislative measures against untouchability. The second task was to improve the economic, social and educational conditions of the members of the Scheduled Castes.

This will automatically solve their problem. The Government of India therefore in 1955 passed ‘untouchability Offence Act.’ As a result of this Act practicing untouchability was made penal offence. On the basis of this law the untouchability was made penal offence. On the basis of this law the Harijans were allowed entry into temples, use of public places of worship and facilities, use of places of recreation, public inhabitants educational institutions etc, people were warned against harassing the Harijans and the so called untouchables.

#### **Intensive propaganda and greater outlay on Harijan Welfare:**

Mere enactment of laws is not sufficient. This proved to be true in regard to the eradication of untouchability also. The Government on one hand passed laws against untouchability and on the other hand carried out intensive propaganda against the social evil. Harijan weeks were observed, films and other audio visual programmes against untouchability were carried out.

Apart from it, different plans made a good deal of provisions for providing assistance to Harijans and taking steps against untouchability. They also made reservations and fixed quota in appointments. These steps by the Government of India yielded good results.

#### **3) Bettering the economic lot of the Harijans:**

Apart from allocating higher funds for Harijans Welfare, the Government made various other efforts for improving their economic condition. It was a known fact that the Harijans were under the financial debt. The first task was to make them free from these debts. They had been

subjected to bounded labour and did not own land. All these factors made them economically weak.

Government of Uttar Pradesh and various other governments particularly after 1969 have made vigorous efforts and also enacted laws for freeing these Harijans from debts and getting them land. The laws that have passed in this regard relate to the following reliefs:

**1) Laws for getting them immunity from debts:**

Almost all the States have now passed laws for granting immunity to the Harijans from old debts. The Harijans that were under the debts of the elders are free now.

**2) Laws against bounded labour and slavery:**

In various States like Bihar and Orissa, the Harijans have been subjected to bonded labour. They had been made practically the slaves of the Mahajans and other landlords. Laws have been passed against this practice. The laws have provided relief to the Harijans.

**3) Distribution of land to Harijans and providing them assistance for cultivation:**

Most of the Harijans of the country do not own land .they worked like laborers on the fields. Now the surplus land that has been secured as a result of ceiling laws and the land that was lying unnecessarily with the individuals and Gramsavha is now being distributed to the Harijans. State like Andhra, Bihar, Orissa, Maharashtra, Tamil Nadu, Uttar Pradesh, Gujarat etc, have made laws and also taken steps for this.

The Harijans are being made the owners of the land and given Pattas. They are also being given financial assistance by the Government as well as by the banks to enable them to cultivate the land.

#### **4) Assistance for Cottage Industries Animal Husbandry etc:**

The Harijans are being given financial assistance not only for agriculture but also for establishing Cottage industries and also running Animal Husbandry. Center's have been established where the Harijans are given training for establishing the Cottage industries, poultry farming, Animal Husbandry etc, the idea is to train them and provide them with necessary resource for improving their economic conditions.

#### **5) Facilities in Education:**

Members of the Scheduled Castes are being given all of facilities in the field of education. They are being given reservation of seats in admission, scholarship, free books and other forms of assistance. In the competitive examination also they are being given some reservation. All this is being done so that they may be able to improve their economic lot. Once the economic lot is improved the evil practice of untouchability shall automatically vanish.

#### **6) Greater Political Power:**

The Harijans are being given reservation not only in Parliament and Legislative but also being given position and power in political field. Various offices of political power such as Ministers, heads of political organisation are appointed from amongst the Harijans. All this is being done so that it may be proved that untouchability shall not be tolerated. The persons when in power can

do it that no exploitation of Harijans was done. In various State Government departments solely devoted to the Welfare of Harijans have been set up. Uttar Pradesh is one such State.

### **7) Non-governmental efforts for eradication of untouchability:**

Government undertook the task of eradicating untouchability only after the country's freedom. Prior to that it was non-government bodies including Indian national Congress and Gandhi's Sarva Sava Samiti that made efforts for the eradication of the untouchability. Now various voluntary organisations are in the field. Some of these existed even before and some of them have now come into being. Organisations like Harijan Sevak Sangh, Indian Depressed Class League, Seva Sangh, Depressed Classes Conference and Scheduled Caste Federation are making effort to eradicate untouchability.

Apart from it, there are various State level organisations in Mysore, Tamil Nadu, Andhra Pradesh, Bihar etc; these bodies are providing facilities to Harijans young boys and girls for education. They are setting up Harijan hostels, institutes for training Harijans Women in useful crafts and so on.

The Government of India and the State Government provide financial assistance to these bodies. These bodies in their turn collect donations and also finance their programmes. The job of these bodies is to assist the Government in the task of eradication of untouchability.

Untouchability is another major problem of Rural India. It is basically a rural problem. Its seeds are only found in rural soils. Untouchability is an ancient concept traditionally. Indian society was broadly divided into four groups such as Brahmin, Kshatriya, Vaishya and Sudra. In the

caste hierarchy the lowest place was given to the Sudras and they were regarded as untouchables by the rest members of Hindu Caste.

Mahatma Gandhi, the father of nation, says “Untouchability is the hate fullest expression of Caste System and it is a crime against God and man”. Further he lovingly called the untouchables as Harijan means the people of God.

Since untouchability is a very old concept, therefore, the untouchables were identified by the different names in different periods. In Vedic period, they were known as ‘Chandala’. In Medieval age, they were addressed as ‘Achhuta’. In the British period, they were known as ‘Exterior Caste’. In the present time, they were generally known as the ‘Scheduled Caste’ by the Indian Constitution.

Though the untouchables are theoretically considered as a part of Varna organisation, they are closely linked with the Hindu Social Life. The presence of untouchables is very indispensable for the smooth functioning of Hindu Society because they perform certain polluting occupations like scavenging, removal of the dead cattle and so on.

It is extremely difficult to define untouchability. Therefore, it is usually defined in terms of disabilities suffered by those who are considered to be the untouchables. Thus it may be said that suffering from all kinds of disabilities is the sign of untouchability. Thus, untouchables are those castes which are subject to all kinds of disabilities in every walk of life such as social, economic, religious and political in other words, the persons who have no right to enjoy any privilege, who do not touch the shadow of higher caste, who follow the lowest kind of occupations, who have occupied the lowest place in the caste hierarchy and deprived from all sorts of things are called to be the untouchables.

Disabilities of Untouchables:

**1) Social Disabilities:**

From the social point of view, the untouchables suffered following disabilities.

**i) Lower Social Status:**

Since social status was fixed for different castes, therefore, the untouchability was placed at the lowest place in the caste hierarchy and enjoys lowest status in the society. Their social status was just like a golden zero. Moreover, they were considered as the symbol of pollution by the higher caste people. Consequently, the untouchables are deprived of all kind of commercial contacts.

**ii) Educational disabilities:**

Traditionally, the untouchables were forbidden from receiving any education. They were not entitled to acquire the knowledge of Vedas. Even if they were not permitted to touch the religious books. The untouchables were not allowed to get education from the public institution. Only recently they have given educational facilities.

**iii) Disabilities relating to Social habits:**

Till recently, the untouchables are faced many problems in various social habits like food, drink and social intercourse. They are not permitted to take food or drink from the house of high caste people. They are eating only ‘Kachha’ foods which are prepared by the ordinary things. In the social intercourse, they are also faced the same problem.

**iv) Prohibition in the use of public places:**

In fact, the untouchables were not allowed to use village wells, ponds, public hospitals, roads and so on. They were not permitted to live in those places where the higher caste people reside. The untouchables were forced to live in the worst type of village slums. Moreover, they were leading a life just like the domestic animals.

## 2) Economic disabilities:

Economically, the position of untouchable's castes was very pitiable. They were deprived from all kinds of economic privileges in the society following are the main economic disabilities of untouchables.

### i) No right to property:

Traditionally, the untouchables were not allowed to have any land or property of their own. They were prevented from entering in various types of enterprises. They were not permitted to acquire wealth or to buy land in village. Even if, the untouchables have no right to sell their landed property to any one. Moreover, they were deprived from all sorts of right to property.

### ii) No right to choose occupation:

In the past, the untouchables were not allowed to engage themselves in occupations which were reserved fro the members of higher castes. They were compelled to struck to their traditional occupations. They were largely engaged in agricultural and other associated works as wage-earners. The untouchables were traditionally associated with such lower occupations like scavenging, leather works, basket making and so on.

Though generation to generation, they lived with half-belly with no hope of getting some tasty foods. Even now their position is not very much different from what it had been. Most of them are still far below the poverty line.

### **iii) Landless laborer:**

The untouchables were traditionally known as landless laborers because they have no land in the village. They were leading a landless laborer life. Before the abolition of zamidari system, their primary duty was to work for a landlord without any remuneration. Thus their position was just like a slave and in certain circumstances worst than a slave. In this context, Gandhiji has said that, “the untouchables performed the most essential service of society yet at the same time they were the lowest paid ones. Only such amount of wages is given to them that are necessary to unite, their cursed soul and their physical frames.

### **3) Religious disabilities:**

Though, the untouchables are known as the Hindus by religion, yet they were not permitted to enter into the Hindu temple and pilgrimages nor were they allowed to use public bathing Ghats. The untouchables were not allowed to study religious books. They were also deprived from the Jajman of Brahmin priests. For example, a Brahmin never accepts to perform the religious ceremony of an untouchable. Only recently, efforts have been made by the Government for removing these religious disabilities by legislators.

### **4) Political disabilities:**

In the past, the untouchables were also deprived from all kinds of political privileges. They were not allowed to participate in political administration and general election of the traditional India.

They were also not permitted to hold any public post. Only during the British rule, they for the first time got the right to vote.

But, now-a-days, they have enjoy maximum political rights on the ground that some seats in Parliament and State Assemblies are reserved constitutionally for them, but it is doubtful, whether they can properly utilise this political rights without their economic development. It means without their economic improvement, they cannot utilise the political rights which they have got.

### **2.3 Indian Law: Legal Measures against Untouchability**

Indian law does not permit the practice of untouchability. Article 17 of the Constitution of India bans the practice. The government of India has passed the Untouchability Act, 1955, to eliminate any form of caste based discrimination. To eradicate the caste based discrimination, the government introduced the reservation system, meaning that it has reserved seats in educational institutes and government services for Dalits. Political parties in India use this as the bait to get votes from the Dalit community too. However, this is a highly debated issue because many Dalits oppose it, stating that merit should be given preference over caste considerations.

Whether we practice or preach against **untouchability**, the truth is that it is still practiced in various parts of India. Those who dared to question social discrimination faced physical and mental torment because the social ground reality still remains the same for them.

ARTICLE 17 abolishes “untouchability<sup>3</sup>” and forbids its practice in any form. The enforcement of any disability arising out of untouchability is to be an offence punishable in accordance with law. It does not stop with mere declaration but announces that this forbidden ‘untouchability’, is

not to be henceforth practiced in any form. If it is so practiced it shall be dealt with as an offence punishable in accordance with the law.

Untouchability is neither defined in the Constitution nor in the Act. The Mysore High Court has, however, held that the term is not to be understood in its literal or grammatical sense but to be understood as the ‘practice as it had developed historically’ in this Country. Understood in this sense, it is a product of the Hindu caste system according to which particular section amongst the Hindus had been looked down as untouchables by the other sections of that society. A literal construction of the term would include persons who are treated as untouchables either temporarily or otherwise for various reasons, such as, suffering from infectious diseases or on account of social observance such as, are associated with birth or death or on account of social boycott resulting from caste or other dispute. In either case such persons can claim the protection or benefit either of Article 17 or of the 1955 Act.<sup>2</sup>

In exercise of the powers conferred by Article 35, Parliament has enacted the Untouchability (Offences) Act, 1955. This Act was amended by the Untouchability (Offences) Amendment Act, 1976, in order to make the law more stringent to remove untouchability from the society. It has now been renamed as, The Protection of Civil Rights Act, 1955. The expression ‘Civil Right’ is defined as ‘any right accruing to a person by reason of the abolition of untouchability by Article 17 of the Constitution.’ Under the amended Act any discrimination on the ground of untouchability will be considered an offence. It imposes a duty on public servants to investigate such offences. It provides that if a public servant, willfully neglects the investigation of any offence punishable under this Act he shall be deemed to have abetted an offence punishable under this Act. The Protection of Civil Rights Act prescribes punishment

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<sup>2</sup> Devarajah v. Padmanna, AIR 1958 Mys. 84.

which may extend to five hundred rupees or both for any one enforcing, on the ground of ‘untouchability’ religious disabilities like- preventing any person from entering any place of public worship or from worshipping or offering prayers therein (section 3) or social disabilities like (section 7), access to any shop, public restaurants, hotels or places of public entertainment (section 4) and refusing to admit person to hospitals (section 5) and refusing to sell goods or render services to any person (section 6) or for other offences, arising out of “untouchability” (section 7).

In Asiad project workers case,<sup>3</sup> THE Supreme Court has held that the fundamental rights under Article 17 are available against private individuals and it is the constitutional duty of the state to take necessary steps to see that these fundamental rights are not violated.

It should be noted that Article 15(2) also helps in the eradication of untouchability. Thus on the grounds of untouchability no person can be denied access to shops, public restaurants, hotels and places of entertainment or the use of wells, tanks, bathing ghats, road and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public.

In State of Karnataka v. Appa Balu Ingale,<sup>4</sup> The respondents were tried for offences under sections 4 and 7 of the Protection of Civil Rights Act, 1955 and convicted and sentenced to undergo simple imprisonment for one month and a fine of Rs.100 each. The charge against the respondents was that they restrained the complainant party by show of force from taking water from a newly dug up bore well (tube well) on the ground that they were untouchables. The High Court acquitted them. The Supreme Court upheld the conviction. The Court held that the object of Art.17 and the Act is to liberate the society from blind and ritualistic adherence and traditional

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<sup>3</sup> People’s Union for Democratic Rights v. Union of India AIR 1982 SC 1473.

<sup>4</sup> AIR 1993 SC 1126.

belief which has lost all legal or normal base. It seeks to establish new ideas for society- equality to the Dalits at par with general public, absence of disabilities, restrictions or prohibition on ground of caste or religion

### **CHAPTER III CONCLUSION**

Since untouchability remains as part of the caste system, it can not be eliminated unless caste system is destroyed. Dr. Ambedkar, an outstanding leader of the untouchables and who himself experienced the untouchability by the upper caste Hindus during his life time, once said "There will be outcastes (untouchables) as long as there are castes and nothing can emancipate the outcastes except the destruction of the caste system.

The caste system can not be destroyed in isolation because it has roots in the system of economic production. It forms as an integral aspect of the Indian production system in the predominantly rural India. So, an approach which embrace and absorb both the dimensions of class and caste of the Indian society must be evolved. And only a movement which takes into consideration both class and caste aspects of the Indian socio-economic structure and which can mobilize the oppressed classes including the oppressed castes could have the potential to smash the inhuman practice of Untouchability in today's India!\*

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