

LEGAL OBLIGATION TO PROTECT SCHEDULED CASTES AND SCHEDULED TRIBES

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Abstract

The main purpose of this article is to focus upon the legal obligations to protect the SC's and ST's from violation of their rights. In every society have been always the socially stigmatized, culturally subjugated, politically marginalized and the most vulnerable community in terms of violation of their rights. In the Hindu social order, its main pillars are the caste system and untouchability which presents a unique case. As a system of social, economic and religious governance it is founded not on the principle of liberty (or freedom), equality and fraternity - the values which formed the basis of universal human rights - but on the principle of inequality in every sphere of life. SC's and ST's are being considered as the most down trodden, exploited, degraded and the least educated strata of the society. They people are considered as 'untouchables' and outcaste. Though India is considered as a world's largest democracy which provides for equality to all its citizens but the irony is this one of its own community is being treated as unequal. This article will put emphasis upon the various laws which were being made to protect the rights of SC's and ST's in India.

"You cannot build anything on the foundation of caste. You cannot build up a Nation. You cannot build up a Morality".

In our Hindu society caste system is considered as one of the most important factor to determine a person's dignity. Caste system is the result of the Hindu belief of 'Reincarnation and Karma'. In Hindu culture there exist four castes which used to develop a social mosaic in which Untouchables are at the bottom of the list or better considered as out of caste. Such rigid caste system is not found anywhere in the world except in India. It is well known that caste discrimination against SC's and ST's is rampant in India. In an overt form, it is both a political reality and social fact. SC's and ST's are subjected to violence, especially in rural areas, their women raped, and their land stolen. SC's and ST's perform the most dangerous and odious forms of labour in Indian society including that of manual scavenging (removing human or animal waste) or performing low-end 'dirty' wage labour in tanneries. SC's and ST's children make up the majority of those sold into bondage to pay off debts to dominant-caste creditors. SC's and ST's women face the triple burden of caste, class, and gender. SC's and ST's girls have been forced to become prostitutes for dominant-caste patrons and village priests. Sexual abuse and other forms of violence against women are used by landlords and the police to inflict political "lessons" and crush dissent within the community.

The Constitution of India provides for social, economic and political justice to all. So, our Indian legal system has provided for number of legal provisions and obligations to protect scheduled castes and tribes and to improve their position. This article focuses upon various laws which are made to protect the Untouchables.

Scheduled castes and the constitution

Article 17 of the constitution abolishes the practice of “untouchability” and punishes the enforcement of any disability arising out of the practice. Article 21 guarantees the right to life and liberty. The Indian Supreme Court has interpreted this right to include the right to be free from degrading and inhuman treatment, the right to integrity and dignity of the person, and the right to speedy justice. When read with Article 39A on equal justice and free legal aid, Article 21 also encompasses the right to free legal aid for those faced with imprisonment and those too poor who are not able to afford lawyers.

Article 23 prohibits traffic in human beings and other similar forms of forced labor. Since the majority of bonded laborers belong to scheduled castes, Article 23 is especially significant for them. Similarly, Article 24 provides that no child under the age of fourteen shall work in any factory or mine or engage in any hazardous employment. Again a majority of children engaged in bonded labor in such hazardous industries are scheduled caste members. Article 45 charges that the state shall endeavor to provide free and compulsory education for all children until they reach the age of fourteen, while Article 43 calls on the state to secure to all workers, agricultural, industrial or otherwise, a living wage and conditions of work ensuring a decent standard of life.

Article 46 comprises 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 Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and forms of exploitation.” As the article falls under the category of directive principles and not fundamental rights, it cannot be enforced by the state’s courts. Article 15(4) empowers the state to make any special provisions for the advancement of any socially and educationally backward classes of citizens, or for scheduled castes and scheduled tribes. This particular provision was incorporated into the constitution through the Constitution (First Amendment) Act, 1951 and has enabled several states to reserve seats for scheduled castes and scheduled tribes in educational institutions, including technical, engineering, and medical colleges. It has also paved the way for reservations in police forces.

Article 330 provides reservations for seats for scheduled castes and scheduled tribes in the Lok Sabha (the House of the People), while Article 332 provides for reservations in the state legislative assemblies. Article 334 originally stipulated that the above two provisions would cease to have effect after a period of ten years from the commencement of the constitution. This article has been amended four times, extending the period by ten years on each occasion. The claims of scheduled castes and scheduled tribes, as per Article 335, shall also be taken into consideration, consistent with maintaining efficiency of administration, in the making of appointments services and posts in connection with the union or of a state.

In addition to constitutional provisions, the government of India has pursued a two-pronged approach to narrowing the gap between the socio-economic status of the scheduled caste population and the national average: one prong involves regulatory measures which ensure that the various provisions to protect their rights and interests are adequately implemented, enforced and monitored; the second focuses on increasing the

self-sufficiency of the scheduled caste population through financial assistance for self-employment activities through development programs to increase education and skills.

The Protection of Civil Rights Act,1955

The aim of this Act is to achieve the objectives enshrined in the Article 17 of the Indian Constitution it focuses on to curb the practice of untouchability by penalizing those practice of untouchability. One important feature of this act is this it makes practice and preaching of untouchability as well as treat of social and economic boycott of a victim as an offence under this Act.

The National Commission for Scheduled Castes and Scheduled Tribes

The National Commission for Scheduled Castes and Scheduled Tribes is a body set up pursuant to Article 338 of the Indian constitution. It has been entrusted with the responsibility of ensuring that the safeguards and protections that have been given to scheduled castes and tribes are implemented. As part of the National Commission, the Commission on Atrocities Against Scheduled Castes and Scheduled Tribes oversees implementation of the Prevention of Atrocities Act, 1989, and the Protection of Civil Rights Act, 1955, though does not have a statutory responsibility to do so. The commission both receives complaints and proactively investigates matters that come to its attention through news reports or by any other means.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

In India the weaker sections people are known as SC's and ST'S to protect them government has introduced this act to protect them against various offences, indignities, humiliation and harassment.

The POA Act was meant not only to prevent but also to eliminate atrocities against SCs and STs. With this in view, it formulated stringent measures for imposing heavy penalties on dominant caste perpetrators of atrocities as well as on those public servants wilfully neglecting their duties in implementing the PoA Act & Rules.

A list of offenses under the act provides a glimpse into the forms that such violence can take, several of which have been documented in this report. Section 3(1) stipulates that the following acts, when committed by a person who is not a member of a scheduled caste or a scheduled tribe, are atrocities and thereby punishable by a term of six months to five years with a fine.

- Forcing a member of a Scheduled Caste or Scheduled Tribe to drink or eat any inedible or obnoxious substance (Section 3(1)(i));
- Acting with intent to cause injury, insult or annoyance to any member of a Scheduled Caste or Scheduled Tribe by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood (Section 3(1)(ii));
- Forcibly removing clothes from the person of a member of a Scheduled Caste or Scheduled Tribe, or parading him naked or with painted face or body, or committing any similar act which is derogatory to human dignity (Section 3(1)(iii));

- Wrongfully occupying or cultivating any land owned by, or allotted to, or notified by any competent authority to be allotted to, a member of a Scheduled Caste or Scheduled Tribe, or getting the land allotted to him transferred (Section (3)(1)(iv));
- Wrongfully dispossessing a member of a Scheduled Caste or Scheduled Tribe from his land or premises, or interfering with the enjoyment of his rights over any land, premises, or water (Section 3(1)(v));
- Compelling or enticing a member of a Scheduled Caste or Scheduled Tribe to do “beggar” or other similar forms of forced or bonded labour, other than any compulsory service for public purposes imposed by the Government (Section (3)(1)(vi));
- Forcing or intimidating a member of a Scheduled Caste or a Scheduled Tribe not to vote or to vote [for] a particular candidate or to vote in a manner other than that provided by law (Section (3)(1)(vii));
- Corrupting or fouling the water of any spring, reservoir, or any other source ordinarily used by members of the Scheduled Castes or the Scheduled Tribes so as to render it less fit for the purpose for which it is ordinarily used (Section (3)(1)(xiii));
- Denying a member of a Scheduled Caste or a Scheduled Tribe any customary right of passage to a place of public resort or obstructing such members so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to (Section 3(1)(xiv));
- Forcing or causing a member of a Scheduled Caste or a Scheduled Tribe to leave his house, village, or other place of residence (Section 3(1)(xv)).

Specific offenses are also designed to protect SC’s and ST’s and tribal women. Specifically, Sections 3(1)(xi) and 3(1)(xii) criminalize the assault or use of force on any woman belonging to a scheduled caste or scheduled tribe, “with the intent to dishonour or outrage her modesty,” and the use of a position of dominance to exploit a scheduled caste or scheduled tribe woman sexually.

- Providing legal aid to victims;
- Making provisions for travel and maintenance expenses for witnesses and victims;
- Providing prompt economic and social rehabilitation to victims;
- Appointing officers for initiating or exercising supervision over prosecutions under the act;
- Identifying areas where SC’s and ST’s would be subject to periodic or large scale atrocities, and;
- Setting up citizens committees to assist the government in the formulation and implementation of measures under the act. Offenses under the act are cognizable—an officer can arrest without a warrant—and non-bailable..

Conclusion

The reasons for widespread practice of untouchability, discrimination and atrocities as well as violent reaction by the higher castes are to be found in their continuing belief and faith in the sanctity of the institution of caste and in untouchability. The traditional Hindu

social order continues to govern the thought process and behavior of the large majority of Hindus in rural areas. The provisions in the Constitution and law are secular and equal but the customary rules of the caste system and the institution of untouchability are based on the principle of inequality in social, economic, cultural and religious sphere. This obviously brings a conflict between what is contained in the constitution and law, and what is contained in the traditional customary rules, norm, and values of the caste system and untouchability. People continued to follow the latter because it provides immense privilege and serves their social, political and economic interests. So to protect Sc's and St's from these atrocities it is necessary that these legal provisions should be implemented in the true sense. Together, we must unite, to force the Indian government to rise above an entrenched caste-mentality and to properly enforce its laws, implement its policies, and fulfill its responsibility to eradicate the concept of Untouchability.

References

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