



ANALYSIS THE LAW FOR PREVENTION OF ATROCITIES AGAINST SCHEDULED CASTES AND SCHEDULED TRIBES

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Abstract

The problem of atrocity against Scheduled tribes in Indian is one important problem relating to scheduled tribes who cannot be ignored. The depressed class in the Indian society have been victims of humiliation, torture and exploitation for thousands of years. In spite of the all legislative measure adopted in favour of scheduled caste and Scheduled tribes in society after independence of India. Generally the scheduled tribes gradually become economic independence while spreading the education. The abolition of untouchables and forbidden discrimination guaranteed by Article 17 and founding fathers while enacting the Constitution of India along with its Preamble. For this purpose, the secondary data from law books, law articles, law journal, newspaper etc. have been used.

Keywords: *Atrocity, caste, Disabilities, cause, constitution Mandate, statues.*



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Introduction

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are brought a new vision to Indian Judiciary. The age old Indian Penal Code deals only with crimes and punishments. But the Act, not only deals with punishments for atrocities, but also prescribes comprehensive measures for protection, welfare and rehabilitation of the victims of the atrocities.

For the effective implementation of the Act, the government has set up different administrative agencies, right from State level to district levels. They are the establishment of Vigilance and Monitoring Committees, Special Courts, Special Public Prosecutors etc. The government servants are made responsible, if they fail to perform their official duties under this Act. Government Officers are also liable for penal punishment under this Act if they fail to perform their duties assigned to them under this Act.

The Governments, more particularly the Central Government are allocating financial resources for implementation of the Act. The central Government enacted the act with the

aimed to eliminate atrocities against the members of the depressed classes and provide protection to them.

The Legislative and Constitutional protections provided to the Scheduled Castes and Scheduled Tribes. It further steps taken by the central Government to prevent atrocities against the members of the disadvantage groups. The Legislative protections given to these sections of the people during British Rule in India and after independence laws made by the Indian Government to protect these people from the atrocities committed by the upper classes of the society, have also been discussed in detail.

The laws have covered all the areas through which a man passes i.e., the education, property including landholdings, other economic rights, injuries to body if he sustained any. Similarly, there are four laws which share and bear the responsibility of protecting Scheduled Castes and Scheduled Tribes members from various kinds of atrocities. The laws are temple entry acts made by the British Government, Indian Penal Code, Criminal Procedure Code, and Caste Disabilities Removal Act 1850.

After post Independence of India, the central government enacted the acts, the protection of Civil Rights Act 1955 and more particularly the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. These laws are purely and surely provide administrative mechanism to provide justice in general but not fruitful justice to the Scheduled Castes and Scheduled Tribes.

Meaning the term of Atrocity:

The term Atrocity denotes an act of extreme heinous cruelty and even the Act and law have not defines the term of “Atrocity. The central government issued the various instruments from time to time, which has been derived the meaning from the term of Atrocity. The States also tended to apply their own interpretations the meaning from the term Atrocity¹. Simuntalosuly, the Ministry of Home Affairs, Government of India has clarified the term of Atrocity which has related to any offence under the Indian Penal Code committed against members of the Scheduled Castes by any non-Scheduled Caste person². Similarly all offences related to the IPC which has committed by non-Scheduled Tribes members against the members of Scheduled Tribe are atrocities. So the Caste is consideration as a motive is not necessary to make such an offence in case of atrocity³.

Movement against Caste Disabilities and Atrocities.

The social system by and large worked well from the age of the Buddha to Gupta Era. But around the third century A.D. the old social formation was afflicted with a deep crisis. . The origin of caste is attributed to the varna System⁴. Basically, the caste system is an inequality and reinforced with concept of dharma and karma. Therefore, the caste system was based on the concept of purity and impurity.

In varna System it implies that the *Vaisyas* and *Shudras* (peasants, artisans and labourers) either refused to perform producing functions assigned to them or else the Vaisys peasants declined to pay taxes and the Shudras refused to make their labour available. They did not observe the varna boundaries relating to marriage and other type of social intercourse.

The epic of that age and Manu emphasized the importance of *danda* or coercive measures. He laid down that the *Vaishyas* and *Shudras* should not be allowed to deviate from their duties. The king appears as upholder and restorer of the *varna* system. Those who departed from their functions and were found guilty of offences were subjected to secular punishments as well as the performance of rituals and penances, all differing according to the *Varnas*⁵.

Thus the authors of *Dharmashastras* made all efforts to describe the most suppressed status of *Shudra* and for centuries it continued to be so in reality. This resulted into perpetuation of socio-economic injustices by the so-called higher castes on the lower castes who have been systematically denied equal chance in the opportunities and facilities of the larger society. This also resulted into social and economic inequalities among humans. Inevitably, it gave rise to gradation and put a premium on snobbery. The caste system tended to develop into group snobbery as upper castes started looking down upon lower castes.

Initially and upto the age of *Rigveda* the division of society was based on occupation. Even members of a family used to profess different occupations. Individuals and groups could rise in the *varna* scale, and they could also fall. This new section formed new castes and sub-castes, and often continued their own customs, rituals of marriage ceremonies and even their own tribal gods and goddesses. The society and religion become more and more complex. The *varna* system enjoyed the sanction of both State and the religion. In course of time, despite initial protest by *Kshatriyas*, *varnas* or social classes and *jaties* or caste came to be regarded hereditary in the eyes of both law and religion⁶.

In the medieval Indian period, particularly during the *Bhakti* period, saints, like Kabir, Nanak, Ravidas, etc., had criticized the existing social order and emphasized the broadest human sentiments and preached a religion of love which would unite all castes and creeds. Despite their efforts, they could not be able to make an effective breach in the caste system. However, they softened its rigour and built a platform for unity⁷.

Abolition of Caste Disabilities and the Law after post –independence of India.

The first law was enforce for removable of the Caste Disabilities the under British Regime. During the period of British rule in India, the practices which came to be called “Untouchability” received limited and for the most part indirect support from the law. The establishment of a nation-wide legal system brought a general movement of disputes from tribunals responsive to the locally powerful into the government’s courts and spread a consciousness of rights which might be vindicated independently of local opinion. The government’s courts espoused a norm of equality before the law and, with few.

After post –independence of India, the fundamental rights to bring the equality and it make really meaningful to the depressed classes and untouchables of Indian society. The Dr.B.r.Ambedkar had made huge number of effort to enumerate several provisions in the Constitution of India. So that caste disabilities can be removed and could be brought Equality in the main stream of the Indian society.

The preamble of the Constitution of India contemplates the basic constitutional goals for the nation. These goals are sought to be achieved by a two-fold means embodied in Parts III and IV of the Constitution. While Fundamental Rights (Part III) embodies and guarantees certain individual freedoms, directive principles of State Policy (Part IV) lays down important non-justifiable positive directives and commands the State to implement these directions, so that the constitutional goals enshrined in the Preamble are realized. In consonance and clothed with flesh and blood by the provisions of Articles 37 to Art.39, Art.39A, Art.41 to Art.45 and Art.46.

The Indian constitution have several provisions to protect the interest of disadvantage groups i.e. , Social order based on justice⁸, The principles of policy to be followed by the state for securing economic justice⁹, equal justice and free legal aid to economically backward classes¹⁰, right to work, education and public assistance in certain cases¹¹, provision for early childhood care and education to children below the age of six years¹², promotion of educational and economic interest of weaker sections¹³.

Article 14 guarantees the principles of equality in general terms. This is exemplified and particularized in Articles 15 and 16. It has been rightly held that Article 14 is the genus of the guarantee of equality of which Articles 15 and 16 are the specie. Article 14, which has to interpret in the light of Article 38 and 45, seems to enjoin the State to ensure substantive or factual equality. Accordingly, this provision confers on the State wide latitude to provide for protective discriminatory measures with minimum of judicial interference.

The permissible judicial scrutiny under Article 14 is confined to the ascertainment of the reasonableness of the impugned legislative classification on the anvil of the well established two-fold test: (a) 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 (b) the differentia must have a rational relation to the object sought to be achieved by the statute in question.

It 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 – access to shops, public restaurants, hotels and places of public entertainment, or the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public¹⁴.

It also ensures to all citizens equality of opportunity in matters relating to employment in State services¹⁵. Further, it provides that: (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 any respect of, any employment of office under the State¹⁶. It also abolishes untouchability 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 a 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 law¹⁷.

In exercise of the power conferred by article 35, parliament has enacted the untouchability offence act; 1955. This act was amended by the untouchability offence 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 found of untouchability will be considered an offence.

Various aspects of atrocities and their impact on victims:

The Personal Aspect of Atrocity most of the victim has suffers not only bodily and mental pain but also imminent feeling of insecurity¹⁸. The main reason for the victim thinks himself as a very pitiable person. The Victim has continues to suffer mental pain during rest of life and even after recovery of bodily hurt. Sometime the Sense of insecurity impede victim to leave his place of residence, village and tries¹⁹ to find out any other secure habitable place and the process was goes on. As result the deterioration of physical, mental, educational, social, economical and psychological status of victim of atrocity²⁰. Secondly, the Physical Aspect of Atrocity, the victim suffers physical injuries on body and undergoes bodily pain for period time and the bodily pain varies according to grievousness of hurt caused on the body²¹. As result the victim physical strength is deteriorated resulting into unfit or less fit in his profession and occupation²². Thirdly, the Economic Aspect of Atrocity with the Commission of atrocity also affects the economic position of victim. Another kind of atrocities, such as destruction and damage of properties, etc .The victim affects the economic position because he suffers direct financial losses²³. Besides some other kind of atrocities such as bodily injuries, ²⁴ and victim has to spend lot of money on his treatment. Similarly when victim suffered the bodily injury then he loses his earning during the period of his illness.

Fourthly, the Education Aspect of Atrocity Commission of atrocity also affects adversely, the educational progress not only of victim but also of his family members. In case the victim is acquiring education himself then commission of atrocities on him, hampers his education directly by bodily pain, infirmity and financial loss. If his family members are acquiring education, then their education suffers adversely, because inability of the victim to help them due to his bodily injuries, bodily and mental pain, infirmity, loss of mental peace, earnings and financial damages, he suffered in the commission of atrocity. Finally, the Social Aspect of Atrocity, when the victim person suffer on cast base both by mental pain and sense of insecurity because there status and reputation of victim is lowered in the society. When the victim caste means also feel insulted and humiliated²⁵ and their reputation also goes down in the society. According, to the social structural theory the distribution of power within a given

society. The victims tend to be social, structural and cultural victimization, which results from customs, tradition, religion and ideology²⁶.

Cause of Atrocities: Self-Assertion by the Depressed Class.

Awakening of the Scheduled Castes and Scheduled Tribes about their rights and protection is another main reason for commission of atrocities on them. In extent Scheduled Castes and Scheduled Tribes who live with human dignity. The two crucial elements for a life with dignity are personal liberty and adequate means of livelihood. The honour and dignity of a person is dependent on work, his right over means of productions and his right to manage the system.

The depressed classes started claiming their legal rights. As a resulted into land disputes, demand of minimum wages, and freedom from bondage of bonded labour and demand of political rights, etc.

The developed animosity between dominant class and depressed classes, ultimately commission of atrocities against on Scheduled Castes and Scheduled Tribes. The Unresolved land disputes relating to the allotment of government land or distributions of surplus land to the landless Scheduled Castes and Scheduled Tribes , tension and bitterness created on account of non-payment or under payment of minimum wages prescribed by the State Governments and resentment against manifestation of awareness amongst the Scheduled Castes and Scheduled Tribes about their rights and privileges as enshrined in the Constitution and various legislative and executive measures are considered main reasons for commission of atrocities on Scheduled Castes and Scheduled Tribes. The resisting forced and bonded labour was also considered as one of the reasons of commission of atrocities on Scheduled Castes and Scheduled Tribes.

Due to Ignorance of Law and Lack of Political will.

Majorities of persons of belongs to Scheduled Castes and Scheduled Tribes are illiterates and consequently ignorant about present law enacted for their welfare. In order the persons who usually commit atrocities on Scheduled Castes and Scheduled Tribes. They are also ignorant about the provisions of the Act. Their ignorance further leads to commission of atrocities on SCs. Due to the ignorance the victims of atrocities in most cases do not lodge police report. Sometimes, they feel that no useful purpose would be served reporting of case to the police as offenders are generally acquitted due to low rate of conviction for so many reasons.

Lack of political will is also considered as one of the reasons for commission of atrocities on Scheduled Castes and Scheduled Tribes. The commissioners, commission and National Commissions for Scheduled Castes and Scheduled Tribes have made several recommendations to prevent atrocities on Scheduled Castes and Scheduled Tribes, but most of the recommendations were never acted upon.

Although the Act was enacted in the year 1989 and was notified on 30th January, 1990 yet the Rules were made and notified only in the year 1995. This delay is considered, as lack of political will to enforce the Act vigorously. Sec. 21(4) casts a duty on the Central Government to place on the table of each house of Parliament, every year, a report on the measures taken by itself and by the State Governments in pursuance of provisions of this section²⁷. The Central Government has not placed any separate report as prescribed under the section. Only annual common reports by concerned Ministry of the Government were laid on the Parliament.

Discussion and conclusion

The objective of this article is to end inhuman practice of treating fellow human beings as untouchable and dirty by reason of their birth in certain casts. The Constitution, however, did not define Untouchability. According to a definition given by the Court, the word untouchability refers to the social disability imposed on certain classes by reason of their birth and doesn't cover social boycott based on conduct. The Court also stated that the Fundamental Right under Article 17 is available against private individuals and it is a Constitutional duty of the state to take measures to ensure that this right is not violated.

The Untouchability (Offences) Act 1955 was the first legislation passed by the Parliament to prevent practice of Untouchability and punish people for practicing it. It broader scope and provide for stringent punishment, it was amended and renamed as the Civil Rights Act in 1976. However, the law was found to be inadequate to check and deter crimes against the member of Scheduled Castes and Scheduled Tribes which has committed by non-SCs and non-STs. It is considered to take necessary to provide for higher punishment those who committing such kinds of atrocities. Therefore a more comprehensive and punitive piece of legislation called the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 was enacted by the central government.

The Act prohibits to commission of offence against members of the scheduled castes and scheduled tribes. According to this act it establishes special courts for the trial of such

offence and the rehabilitation of victim. In order the act outline actions by Non- scheduled castes and Non- scheduled tribes against scheduled castes and scheduled tribes to be treated as offences. According to this act, a Court of Session at the distinct level is deemed a special court to provide speedy trial for offences. A special prosecutor is appointed to conduct cases in this court. When the act specifics that a Non - scheduled castes and Non-scheduled tribes public servant who Neglects his duties relating to scheduled castes and scheduled tribes shall be punishable with imprisonment for term of six months to one year. Similarly, the Investigation of an offence committed under the scheduled castes and scheduled tribes act cannot be investigated by an officer not below the rank of Deputy Superintendent of policy.

Finally, it suggested that every higher education institution to take the necessary step regarding to include the all law related to Scheduled Castes and Scheduled Tribes in their respective syllabus of the LLB. It need to wide spread publicity to be done through all the media highlighting the all law related to Scheduled Castes and Scheduled Tribes.

End Note.

1. T.R.Naval, (2004), Legally Combating Atrocities on Scheduled castes and Scheduled Tribes, published by Concept publishing Company, New Delhi.pp,at 40
2. *Ibid*
3. *Ibid*
4. Edited M.H.Makwana,Richard Pais, Backward Classes and Social Justice, Rawat Publication, (2011),New Delhi at pp.4.
5. *Ibid 3 at 10*
6. *Ibid 5 at 11*
7. *Ibid 6 at 12*
8. See, Article 38 of Indian constitution
9. Article 39
10. Article 39A
11. Article 41
12. Article 45
13. Article 46
14. Article 15(1)
15. Article 16(1)
16. Article 16(2)

17. Article 17
18. *Ibid* 7at 41
19. *Ibid* 18 at 42
20. *Ibid* 19 at 43
21. *Ibid*
22. *Ibid*
23. *Ibid*
24. *Ibid*
25. *Ibid*
26. *Ibid*
27. See, supra Note 26 at 52.

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