



PROTECTION AND SAFEGUARDS FOR THE SC's AND ST's: OVERVIEW OF SC/ST (PREVENTION OF ATROCITIES ACT 1989)

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ABSTRACT

The largest democracy of the world remains at risk of systematic human rights violation on the basis of the caste system against SCs/STs. Every day the Scheduled castes and Scheduled Tribes are discriminated and violated on the hands of dominant castes in our society. Even after six decades of Indian Republic the SC's and ST's had never got social equality and self-dignity. Based on the caste system these people are still suffering innumerable types of discrimination such as 'Untouchability, social separation, mass-killing, raping SC's and ST's women and girls, burning SC's and ST's houses, restricted temple, two glass system, separate sitting arrangements from public places and educational institutions' etc. One estimate says "Every hour two SC's and ST's are assaulted, every day three SC's and ST's women raped, every day two SC's and ST's are murder and every day two SC's and ST's houses are burn down. Large scale violations perpetrated involve burning of home, murders, torture, molestation, and raping of women etc."

INTRODUCTION:

These are the great witness how SC's and ST's are violated and exploited in rural and urban India. "Atrocities against SC's and ST's are not a new phenomenon. They are established techniques adopted by the dominant castes to reinforce their power and to assert their superior status. The whole phenomena has greater significance as it generally occurs when upper castes feel threatened that the status quo is being challenged by SC's and ST's seeking basic human rights and equality. We examine atrocities against SC's and ST's in the context of two related process: SC's and ST's self-assertion, and state provisions to protect SC's and ST's from upper-caste violence and humiliation."

The SC's and ST's represent a community of 24 per cent of the Indian Population. One of every fourth Indian is SC's and ST's. Yet due to their caste identity SC's and ST's regularly face discrimination and violence which prevent them from enjoying the basic human rights and dignity promised to all citizen of India. More than 250 Million people are discriminated on the basis of caste system in world-wide countries like Nepal, Pakistan, Bangladesh, Srilanka, South-Africa, and outside of the South Asia. Numerically SC's and ST's are strength but most of them landless agricultural laborers, illiterates, economically poor and politically voiceless. These kinds of helplessness and hopelessness are main root causes of the atrocities against SC's and ST's. Every year thousands of atrocity cases are registrar



under the Protection of Civil Rights (PCR) Act, 1976, and the SC's/ST's Prevention of (Atrocities) Act, 1989.

Protecting the rights and dignity of Scheduled Castes and Scheduled Tribes has been a major challenge even after India's independence. Despite special protective laws such as the Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and their implementation for several decades, the Scheduled Castes and Scheduled Tribes continue to be the victims of caste-based discrimination and atrocities. Even after fifty eight years of Independent India, it plagued by widespread discrimination against the Scheduled Castes and Scheduled Tribes. Despite the constitutional safeguards seeking to protect and promote the interest of these groups, atrocities against them still continue to be on the rise, due to different historical, cultural, socio-economical, and political reasons.

Even of sixty three years of Indian independence the SC's and ST's are not treated as a human beings, there are treated as an untouchable beings. These kinds of inhuman treatment may not be happened in animal world also. Why you targeting the SC's and ST's and what are the basic root causes of the atrocities on SC's and ST's in India. A National Human Rights commission (India) report says the police have committed custodial torture, killing, looting of SC's and ST's property, rape and sexual harassment against SC's and ST's women. Firstly and most importantly the SC's and ST's are discriminated and physically attacked by the dominant castes, secondly the SC's and ST's are rejected and violated by the hands of the police thirdly and finally the SC's and ST's are losses their social justice in judiciary process. Because of the whole governmental institutions are directly and indirectly supporting of the SC's and ST's atrocities.

The present study is focusing on implementation of the Scheduled castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. This Act comes into force in the year of 1990 to protect and prevent the atrocities against the communities of the Scheduled castes and Scheduled Tribes. Even the twenty years of the atrocities Act, 1989 was not covered all kinds of atrocities as well as it was ends with the high level acquittal and in low level of conviction rate. Due to the number of reasons the prevention atrocities act, 1989 not implemented in proper way and not fulfill the desire of the SC and ST's communities in India.

As well as the Indian constitution provides an elaborate and effective framework to administer social justice because it lays down in particular (i) the policy goals and objectives, (ii) legislative and institutional machinery, and (iii) guidelines for physical infrastructure and financial support. Notwithstanding the fact that the high ideals of social justice and the means to achieve them have been well articulated in our constitution, and while we can also take legitimate pride in having established "A sovereign socialist secular democratic republic 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 unity and integrity of the nation, yet the elitist and unequal character of Indian society cannot be considered a matter of much satisfaction. Atrocities on weaker sections, especially the scheduled castes and scheduled tribes have become a regular feature of rural life in India”.

The caste based discrimination sanctified by the Hindu religious scriptures, is still haunting large segment of Indian society. Despite the formal protections under laws the Scheduled castes and scheduled tribes are still meted out with atrocities which are striking at the very basic fundamental rights. The vested upper caste interests and the desire to maintain the monopoly over the community resources is involved in maintaining the caste based discrimination and atrocities. Further the state complicity as a whole has turned the prevention of atrocities act nugatory and unsuccessful thus resulting in perpetuation of atrocities. The Scheduled castes and scheduled tribes caste based violence is no less graver than the discrimination faced by the blacks on racial grounds of race and thus needs to be fought at the international level. But 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. The attention must be given to the gravity of the caste-descent based discrimination and the growing human the Scheduled castes and scheduled tribes rather than concentrating on the nomenclature of the form of discrimination.

Theoretical Frame Work

The oldest of the civilizations and a self sufficient agricultural, industrialized nation, raising etc head high, still emerging as one among the most powerful nations in the world holding an expertise in information and technology. Apartheid dominant racial discrimination is still prevalent in India. Hindu law given Manu, is worth nothing, particulars, in view of its deep influence among Hindu and the devotion with which the Hindu adhere to its teaching till date. Unequal social status and power relations between Brahmins and other upper caste Hindus on the one hand, the shudras and Atii-Shudras on the other Hindu scriptures have identified as Chandalas, untouchables, Ati-Shrudas and Panchamas. M.K. Gandhi called from as Harijans; the British acknowledge them as depressed classes and untouchables. The traditional violence is one in which the caste Hindus who fed that the untouchables are not only the embodiment of evil spirits but also the power over such spirits that are responsible for most of the diseases.

In the attempt which the government does to protect these people is exhibited in two forms (a) social reforms and political interventions (b) legal measures. The Mahatma as he was called could motivate the Scheduled Castes and Scheduled Tribes unto fighting for their rights, self respect and dignity, but at the sometime persuaded them to take up modern and more dignified occupations. Dr. Ambedkar had advocated appropriate legislative measures both to change the



mindset of the exploiters or oppressors and to protect the interests of the oppressed. Interventions during and after independence on both a welcome (Ramaiah, 1998). The uncordial relation has resulted in frequent violence against Scheduled Castes and Scheduled Tribes. Ambedkar maintains: "Caste killed public spirit caste has made public opinion impossible. A Hindu's public is his caste. His responsibility is only to his caste. His loyalty is restricted only to his caste. Virtue has become caste-ridden and morality has become caste-bound".

Varna and Untouchability

The major causes of the atrocities on SC's and ST's is that the "Hindu Chaturvarna" according to "Manudharma Sastra". Basically India is a multicultural, multilingual country which adopts a liberal attitude towards its diverse religious practices. One can find the prevalence of the caste system more in Hinduism than any other religion. Caste system in India has a history and it defines how caste has evolved through the ages. Caste and social status has always been quite puzzling. In the British era, they tried to equalize the caste system in India with the class system. Castes are the divisions, into which a certain section of the community belongs, which also enjoy social status accordingly. What is generally meant by the social status is the prestige or the honour that is being attached to one's position in the society. An individual might acquire more power and privilege due to a characteristic; this puts him among the privileged group of the people who enjoy high status. Brahmins are the priestly class, the protector of religion while the Kshatriyas hold the political power.

India is a caste based society. The origins of the caste system in India are shrouded, but it seems to have originated some two thousand years ago. Under this system, which is associated with Hinduism, people were categorized by their occupations. Although originally caste depended upon a person's work, it soon became hereditary. Each person was born into an unalterable social status. The four primary castes are: Brahmin, the priests; Kshatriya, warriors and nobility; Vaisya, farmers, traders and artisans; and Shudra, tenant farmers and servants. Some people were born outside of (and below) the caste system. They were called "untouchables."

THE BRITISH RULE AND CASTE

In the beginning of British rule in India, the Britisher's are used the caste system for their benefits of administration. There are applied the principle of "Divide and Rule Policy" on the own basis of caste system and c lass system. When the British government began to take power in India in 1757, they exploited the caste system as a means of social control. The British allied themselves with the Brahmin caste, restoring some of its privileges that had been repealed by the Muslim rulers. However, many Indian customs concerning the lower castes seemed discriminatory to the British, and were outlawed. During the 1930s and 40s, the British government made laws to protect the "Scheduled castes" - untouchables and low-caste people. Within Indian society in the 19th and early 20th there was a move



towards the abolition of untouchability, as well. In 1928, the first temple welcomed untouchables or the SC's and ST's ("the crushed one s") to worship with its upper-caste members. Mohandas Gandhi advocated emancipation for the Dalits; too, coining the term *harijan* or "Children of God" to describe them. The Republic of India became independent on August 15, 1947. India's new government instituted laws to protect the "Scheduled castes and tribes" - including both the untouchables and groups who live traditional life-styles. These laws include quota systems to ensure access to education and to government posts. Over the past sixty years; therefore, in some ways a person's caste has become more of a political category than a social or religious one.

ROOT CAUSES OF UNTOUCHABILITY

“Untouchability means pollution by the touch of certain persons by reason of their birth in a particular caste or family. It leads to defilement, pollution and contamination. It is believed that the practice of untouchability is peculiar to the Hindu society. Untouchability as a social concept has become embodied in customs and as customs differ so does untouchability. The classes, which are commonly regarded, as untouchables are Chamars, Busadh, Dom, Halalkor, Hari, Mochi, Mushahar. Although they were outside the pole of Hindus society, which recognizes only four classes namely, *Brahmanas*, *Kshatriyas*, *Vaishyas* and *Shudras*, they were reckoned as part of the Hindu society for political purposes.” Before the Indian constitution that abolished untouchability in 1950, the untouchables were divided into three categories namely untouchables, unapproachable and unseenable.

B.R.Ambedkar had experienced of untouchability from his entire educational and social life. He was stated several social activities to remove and eliminate the social evil of the untouchability. The burning of the *Manu Smriti* took place at Mahad on December 20th; 1927. The function was a part of the campaign for establishing the right to take water from the Cawdar tank. The burning of the *Manu Smriti* took place publicly and openly in a conference of untouchables. It was a deed of great daring. It was an attack on the very citadel of Hinduism. The *Manu Smriti*, that contains the Hindu codes, is insulting to persons of low castes. It deprived them of the rights of human beings and crushed their personality.

First time in India, the British government has taken very few steps to remove of the untouchability. The penal statute to remove untouchability was introduced during the British in 1938 in the Madras legislature. Discriminating the untouchables in the public places such as roads, wells and transportation and 'other secular institutions' including restaurants, hotels, shops, etc. was made a cognizable offence which attracted a fine and imprisonment up to six months. The Bombay Harijan Temple Worship Act, 1947, conferred on the Dalits a right to enter temples and offer worship. During this period, two other enactments were also passed namely the 'Removal of Social Disabilities Act, 1947' and the 'Hindu Social Disabilities Removal Act, 1948' which prohibited the practice of untouchability



and sought to punish those who are committed atrocities against the Scheduled caste and scheduled Tribes.

In 1950 the constitution of India prohibits the practice of untouchability. Under the article “17”, later in the year of 1955, the Indian parliament has passed anti-untouchability Act, 1955. “Untouchability” means the practices evolved as social restrictions in sharing food, access to public places, offering prayers and performing religious services, entry in temple and other public places and denial of access to drinking water sources, etc. With the coming of independence, the Constitution in Article 17, made a categorical provision for the abolition of untouchability. The Untouchability (Offences) Act, 1955 was passed by the Parliament under powers conferred by Article 35 of the Constitution of India.

According to Untouchability (Offences) Act, 1955, enforcement of disabilities with regard to entrance and worship at temples, access to shops and restaurants, practice of occupations and trades, use of water sources, places of public resort and accommodation, public conveyance, hospital, educational institutions, constitution and occupation of residential premises, holding of religious ceremonies and processions, were all liable to be penalized with a fine of up to Rs. 500/- or imprisonment for up to six months, cancellation or suspension of licenses and public grants. Significantly, the Act placed the burden of proof on the accused and not the prosecution.

However, there were several lacunae in the Act and there was widespread criticism that the Act was not serving the purpose for which it was enacted. The Act did not define the term “untouchable” or “untouchability”. The punishments awarded under the Act were inadequate and not deterrent enough. Responding to the criticism, the Government appointed a Committee to review the working of the Act and to suggest changes. Based on the recommendations of the Committee, a bill to amend the Untouchability (Offences) Act, 1955 was introduced in the Lok Sabha in 1972. The old Act was amended by the Untouchable (Offences) Amendment and Miscellaneous Provisions Act, 1976 and rechristened as the ‘Protection of Civil Rights Act, 1955’.

After the enforcement of Protection of Civil Rights (PCR) Act, 1976 was not covered all kinds of offences under untouchability. Under this Act, “Civil Rights” has been defined as any right accruing to a person by reason of abolition of untouchability under Article 17 of the Constitution. The Act makes the preaching and practice of untouchability or the enforcement of any disability, as a cognizable and non-compoundable offence. Preventing a person on the ground of untouchability from entering a place of worship established or maintained by a religious denomination has been made an offence.

All untouchability offences, for which punishment does not exceed 3 months, can be tried summarily. The punishment for untouchability offences was



enhanced and both fine and imprisonment would be awarded for such offences. For subsequent defaults, the punishment has been enhanced to range from one year imprisonment with fines of Rs, 500/- to two years imprisonment and a fine of Rs. 10,000/-. State Governments, under the Act, were also empowered to impose collective fines on the inhabitants of the any area found committing and abetting the commission of an offence under the Act. Person convicted under the Act, are debarred from contesting elections to the Central or State legislature. Another significant provision in the Act was that the public servants, who willfully show negligence in the investigation of any offence punishable under the Act, shall be deemed to have abetted an offence punishable under the Act.

THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989

The preamble to the enactment clearly states that the objective of the enactment is to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences. It would be useful to quote here a section from the statement of objects and reasons, in order to extract from it, the political and sociological understanding informing this enactment. Because of the awareness created amongst the Scheduled Castes and Scheduled Tribes through spread of education, etc., they are trying to assert their rights and this is not being taken very kindly by the others. When they assert their rights and resist practices of untouchability against them or demand statutory minimum wages or refuse to do any bonded labour, the vested interests try to cow them down and terrorize them.

When the Scheduled Castes and the Scheduled Tribes try to preserve their self-respect or honor of their women, they become irritants for the dominant and the mighty. Occupation and cultivation of even the Government allotted land by Scheduled Castes and Scheduled Tribes is resented and more often these people become victims of attacks by the vested interests. Of late, there has been an increase in the disturbing trend of commission of certain atrocities like making the Scheduled Castes persons eat inedible substances like human excreta and attacks on and the mass killings of helpless Scheduled Castes and Scheduled Tribes and rape of women belonging to the Scheduled Castes and the Scheduled Tribes.”

Here Few Salient Features of the Act, 1989 and Rules, 1995

Though the Act does not define “atrocities”, Section 3 enumerates the multiple ways through which members of the Scheduled Castes and Scheduled Tribes are oppressed and/or humiliated, which would amount to an offence under the Act. The atrocities listed here include forcing the eating of obnoxious substances, dumping waste matter on land, wrongful occupation of land, dispossession, bonded labour, intimidation during voting, mischievous litigation, false information, public information, outrage of modesty, sexual exploitation, fouling of water resource, obstruction of energy to a public place, eviction from



habitation, mischief with explosives, destruction of buildings and suppression of evidence.

- The offences of custodial rape, highway robbery and house breaking by night which carry a minimum punishment of ten years or more, under the Indian Penal Code are punishable with imprisonment for life and with fine under this Act.
- The Act also provides for forfeiture of property, externment of potential offenders, and collective punitive fine.
- A public servant, who neglects his duties under the Act, is punishable.
- The Act prohibits the grant of anticipatory bail to the potential accused under the Act and places restrictions on grant of probation to the convict of an offence under the Act.
- The Act makes provision for minimum relief and compensation to the victims of atrocities or to their legal heirs.
- Provisions of the Act are implemented by the State Governments and Union territories.
- With a view to expedite the trial of the cases registered under the Act, the State Governments shall set up special courts.
- Section 15 of the Act provides for the appointment of Special Public Prosecutor for conducting the cases.
- As per the Rules (The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995), the State Governments are required to set up Scheduled Castes and Scheduled Tribes Protection Cell at the State Headquarters, for looking after the implementation of the Act.
- Rule 11 lays down the details for provision of relief, traveling allowance, daily allowance, maintenance expenses, etc. to the persons affected by the atrocities.
- Rule 7 provides that a Police Officer not below the rank of a Deputy Superintendent of Police shall investigate offences committed under the Act.
- The State Governments and Union Territory Administrations are being extended financial support for implementation of the Act, under the Centrally Sponsored Scheme implemented by the Central Government.

Concluding Remarks:

Finally, the Separately from the correct causes, the superior social and economic disabilities such as poverty, illiteracy, economic backwardness and ignorance of the law, of both the Scheduled Castes and the Scheduled Tribes, further add to their oppression. Consequently, in addressing the root causes for discrimination and atrocities against the Scheduled Castes and Scheduled Tribes,



the approach while keeping in mind the historical and social causes, needs to also examination the impact of its policies and programmes impacting the lives of these marginalized sections. Therefore in the introduction chapter was discussed the main causes for the atrocities against the scheduled caste and scheduled tribes. Coming chapter will completely focusing on the whole implementation process of atrocities act, 1989 and the basic failures of these act will be evaluate.

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