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ARTICLE 17 AT SEVENTY-SEVEN: CONSTITUTIONAL ABOLITION OF UNTOUCHABILITY VS. SOCIAL REALITY

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ABSTRACT

Article 17 of the Indian Constitution clearly abolishes “untouchability” and its related practices. This represents a significant constitutional move against caste-based oppression. Article 17 is designed not only to prohibit these practices but also to create real change. It aims to break down centuries of exclusion, humiliation, and uneven social hierarchies. However, despite this clear ban and the creation of laws like the Protection of Civil Rights Act of 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989, caste-based discrimination continues in obvious and subtle ways throughout Indian society.

This paper looks closely at the constitutional intent behind Article 17 and the social realities that hinder its full realisation. It reviews the discussions from the Constituent Assembly regarding Article 17, examines how Indian courts have interpreted it, and analyses existing socio-legal data. This highlights the gap between the formal constitutional abolition of untouchability and the lack of real change in social practices. The paper argues that this disconnect is not due to flaws in the constitutional design, but rather to weak enforcement systems and the ongoing influence of caste hierarchies that exist outside of formal legal frameworks.

Using a doctrinal and analytical research approach, along with secondary socio-legal resources, the paper assesses how effective Article 17 is as a tool for social justice and transformative constitutionalism. It also questions the limits of criminal law in tackling deeply rooted social inequalities.

1. INTRODUCTION

1.1 Article 17 in the framework of the Indian Constitution

The Constitution of India envisages itself as a transformative instrument designed to dismantle entrenched hierarchies and secure substantive equality for historically marginalised communities. Among the fundamental rights, Article 17 occupies a distinctive position by constitutionally abolishing “untouchability” and prohibiting its practice “in any form.”¹ Unlike Articles 14, 15, or 19, Article 17 admits of no exception, limitation, or reasonable restriction, reflecting the moral urgency with which the framers approached caste-based oppression.

The constitutional ideals of fraternity and dignity found in Articles 14 and 21 are closely related to Article 17. The Supreme Court has consistently acknowledged that caste-based exclusion undermines equal citizenship and goes against the fundamental principles of human dignity.² The inclusion of Article 17 in Part III signifies the understanding that untouchability is a constitutional violation that carries criminal penalties in addition to being a social wrong. Thus, the clause represents a clear transition from social reform to a legally binding constitutional obligation.

1.2 Historical Context and Constituent Assembly Intent

The constitutional abolition of untouchability must be understood in the context of centuries-old caste systems that controlled access to public spaces, jobs, education, and even basic human interactions. Colonial laws aimed at addressing caste discrimination were scattered and ineffective, which led to a need for a complete constitutional change.

The Constituent Assembly Debates show a clear commitment to ending untouchability without exception. Dr B.R. Ambedkar consistently emphasised that political democracy would keep being weak unless combined with social democracy grounded in equality and fraternity.³ Notably, the framers chose not to define “untouchability,” allowing the provision to adapt to changing forms of caste-based exclusion. Their goal was to eliminate not just traditional practices, but also their modern counterparts in supposedly neutral social environments.

1.3 Research questions, objectives, and methodology

This study focuses on these research questions:

- Has Article 17 achieved its objective of eradicating untouchability in practice?

¹ The Constitution of India, art 17.

² State of Karnataka v. Appa Balu Ingale, (1995) 2 SCC 273.

³ B.R. Ambedkar, Constituent Assembly Debates, Vol. VII (1948).

- How has the judiciary interpreted and enforced Article 17 over time?
- Why does caste-based discrimination persist despite constitutional prohibition?

The objectives of this research are threefold: first, to analyse the constitutional vision underlying Article 17; second, to evaluate judicial and legislative mechanisms for its enforcement; and third, to critically examine the gap between constitutional abolition and social reality.

The research uses a doctrinal and analytical approach. Primary sources include constitutional provisions, Constituent Assembly Debates, and judicial decisions. Secondary sources such as academic writings, law commission reports, and socio-legal studies are employed to contextualise constitutional interpretation. No empirical fieldwork is undertaken.

1.4 Scope and limitations of the study

The scope of this study is limited to a constitutional and legal analysis of Article 17 within the Indian legal system. While social realities are discussed, the paper does not attempt an empirical sociological investigation. A further limitation lies in reliance on reported judicial decisions and secondary literature, which may not fully reflect the lived experiences of caste oppression. Nevertheless, the study provides a critical doctrinal account of the constitutional abolition of untouchability.

2. Constitutional scope and legal framework of Article 17

2.1 Nature and Scope of Article 17: Absolute and Enforceable Prohibition

Article 17 of the Constitution of India declares that “untouchability” is abolished and its practice in any form is forbidden, further providing that the enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.⁴ The wording of Article 17 is categorical and unqualified, setting it apart from several other fundamental rights that are subject to reasonable restrictions. This absolute nature reflects the framers’ recognition of untouchability as a grave affront to human dignity and equal citizenship rather than a mere social custom.

The Supreme Court has repeatedly affirmed that Article 17 is absolute and enforceable. It imposes constitutional obligations on the State to eliminate caste-based discrimination in all its forms. The Court determined that denying Dalits access to a public water source clearly violates Article 17. It emphasised that untouchability is not limited to traditional religious practices; it

⁴ *Supra* note 1.

includes any type of social exclusion based on caste.⁵ The Court described untouchability as a “blot on Indian society” that the Constitution aims to remove.

A key feature of Article 17 is that it is self-executing. Unlike some socio-economic rights that need further legislative detail, Article 17 takes effect immediately, making any practice of untouchability unconstitutional from the start.

2.2 Horizontal Application and Relationship with Articles 14, 15, and 21

Article 17 is central to the equality code of the Constitution and should be read in harmony with Articles 14, 15, and 21. Article 14 guarantees equality before the law and equal protection under the law. Article 15 prohibits discrimination based on religion, race, caste, sex, or place of birth. Article 21, broadly interpreted, protects the right to live with dignity. Together, these articles form the basis for true equality.

The Supreme Court has made it clear that Article 17 has horizontal application, meaning it binds not just the State but also private individuals. In the case of *People’s Union for Democratic Rights v. Union of India*, the Court ruled that certain fundamental rights, including those that tackle social exploitation, can be enforced against non-State actors.⁶ This interpretation is especially important for Article 17, since untouchability practices are mainly carried out by private individuals and social groups, not just the State.

Judicial interpretation has also linked Article 17 with the concept of dignity under Article 21. The Court recognised that practices such as manual scavenging stem from caste-based discrimination. These practices violate both Article 17 and Article 21⁷ by perpetuating indignity and social exclusion.

Thus, Article 17 goes beyond formal equality and promotes the constitutional goal of transformative justice. By working alongside Articles 14, 15, and 21, it addresses not just discriminatory results but also the social hierarchies that support caste oppression. This understanding highlights that untouchability is not only a breach of equality but also a denial of constitutional morality itself.

2.3 Legislative Enforcement of Article 17

While Article 17 takes effect on its own, Parliament has passed specific laws to clarify its purpose and ensure penalties for violations. The two main statutes related to this are the

⁵ *Supra* note 2.

⁶ *People’s Union for Democratic Rights v. Union of India*, (1982) 3 SCC 235.

⁷ *Safai Karamchari Andolan v. Union of India*, (2014) 11 SCC 224.

Protection of Civil Rights Act, 1955 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2.3.1 Protection of Civil Rights Act, 1955

The Protection of Civil Rights Act, 1955, originally known as the Untouchability (Offences) Act, 1955, was the first law enacted to implement Article 17. The Act makes it illegal to enforce disabilities caused by untouchability. This includes denying access to public places, temples, wells, schools, and public transport.⁸ It also penalises the refusal to sell goods or render services on the grounds of untouchability.

Despite its symbolic importance, the Act has been criticised for weak enforcement, low conviction rates, and inadequate penalties.

2.3.2 SC/ST (Prevention of Atrocities) Act, 1989

Recognising the limitations of the 1955 Act, Parliament enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, to address the structural and violent dimensions of caste-based discrimination. The Act criminalises a wide array of offences against members of the Scheduled Castes and the Scheduled Tribes. This includes social boycotts, humiliation, land dispossession, and violence linked to caste identity.⁹

The Supreme Court has described the 1989 Act as a legislative embodiment of the constitutional mandate under Articles 14, 15, 17, and 21. In the case of Subhash Kashinath Mahajan v. State of Maharashtra, the Court recognised the historical oppression faced by SC/ST communities and stressed the need for special legislation to promote constitutional equality.¹⁰ Legislative amendments have further strengthened the protective framework of the Act.

3. Judicial interpretation and enforcement of Article 17

The judiciary has significantly expanded the interpretation of Article 17 beyond traditional concepts of untouchability. In People's Union for Democratic Rights v. Union of India, the Supreme Court defined Article 17 as a constitutional protection against all forms of social exploitation stemming from caste hierarchy.¹¹

A crucial clarification of Article 17 occurred in State of Karnataka v. Appa Balu Ingale, where

⁸ Protection of Civil Rights Act, 1955, ss. 3–7.

⁹ Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, ss. 3–4.

¹⁰ Subhash Kashinath Mahajan v. State of Maharashtra, (2018) 6 SCC 454.

¹¹ *Supra* note 6.

the Court ruled that denying Dalits access to public water sources violated Article 17.¹² The Court pointed out that untouchability is not limited to religious practices; it includes any social exclusion or humiliation based on caste.

Judicial interpretation also established that Article 17 applies both vertically and horizontally. This means it binds not only the State but also private individuals, reinforcing the commitment to social change rather than just State non-interference. However, despite progressive court decisions, enforcement is still inconsistent due to under-reporting, social stigma, and lack of action from institutions.

Judicial engagement with Article 17 has shifted from a mere formal prohibition of recognisable discriminatory practices to a deeper investigation of caste as a system of power. More recent rulings have focused on understanding how caste-based exclusion evolves within changing social and economic situations. This evolution reflects a shift from symbolic constitutionalism to a more practical interpretation.

Rather than viewing untouchability as an outdated or diminishing practice, the judiciary recognises its ability to adapt. This understanding has led courts to see Article 17 as a continuing constitutional command rather than a historical relic.

3.2 State Obligations and Positive Duties

A key development in judicial interpretation of Article 17 involves outlining positive State obligations. Unlike traditional civil liberties that ask for non-interference by the State, Article 17 requires active State involvement to break down established social hierarchies. Courts have increasingly framed Article 17 as imposing a duty to prevent, investigate, prosecute, and address caste-based exclusion.

The Supreme Court has made it clear that constitutional rights aimed at addressing historical wrongs cannot be achieved through passive governance.¹³ In the context of Article 17, this means there are obligations to ensure proper enforcement of protective legislation, establish accountability in institutions, and prevent re-victimisation of affected communities. Failures in enforcement are treated not just as administrative errors but as violations of constitutional rights.

¹² *Supra* note 2.

¹³ *Supra* note 6.

Importantly, the Court has linked State responsibilities under Article 17 to standards of constitutional governance. When public authorities tolerate, overlook, or inadequately respond to caste-based discrimination, the constitutional promise of abolition becomes meaningless.

3.3 Article 17 as an Instrument of Transformative Constitutionalism

Transformative constitutionalism envisions the Constitution as a tool for reshaping unequal social relations rather than just limiting State power. Article 17 is one of the most direct representations of this vision. Its purpose is not neutrality but change—explicitly rejecting caste hierarchy as incompatible with constitutional values.

Judicial interpretation increasingly views Article 17 as part of a larger constitutional effort aimed at social rebuilding. In cases involving caste-based labour, housing exclusion, and social humiliation, courts have framed Article 17 as a guarantee of equal moral standing within the political community.¹⁴ This perspective matches Dr B.R. Ambedkar's belief that constitutional democracy must be rooted in social democracy.

The transformative potential of Article 17 lies in its rejection of gradualism. Unlike guiding principles that suggest gradual realisation, Article 17 demands immediate and unconditional abolition. Courts have relied on this aspect to support strong remedial actions, including ongoing mandates and oversight of compliance by the executive. Such judicial approaches show a recognition that deeply ingrained social hierarchies cannot be dismantled through mere declaratory judgments.

However, the application of transformative constitutionalism under Article 17 is still inconsistent in practice. While courts articulate wide-ranging principles, structural inequalities—such as caste-based segregation and economic dependency—often lie beyond the scope of judicial remedies. This gap highlights the limitations of law-led change in the absence of ongoing political and administrative commitment.

3.4 Limits of Judicial Intervention in Social Reform

Despite its progressive tendency, the judiciary has recognised the inherent limits of its role in promoting social reform. Article 17 deals with issues deeply embedded in social awareness, cultural traditions, and economic relationships—areas that law alone cannot fully regulate.

Courts face structural barriers when it comes to enforcing compliance at the grassroots level. Monitoring implementation, ensuring witness protection, and changing deeply rooted social

¹⁴ *Supra* note 7.

behaviours often exceed institutional capabilities. Overstepping judicial boundaries could replace democratic discussion with legal directives, which might undermine legitimacy.¹⁵ Thus, courts are cautious in extending Article 17 jurisprudence into areas requiring ongoing social mobilisation.

There is also an epistemic limitation: courts depend on cases presented to them, which often represent a small fraction of actual violations due to under-reporting, fear of backlash, and social stigma. Consequently, judicial accounts of untouchability may underestimate its prevalence and complexity.¹⁶ This limitation highlights the need for supporting legislative, administrative, and social measures.

Ultimately, while the development of Article 17 jurisprudence has advanced constitutional ideals, courts alone cannot fulfil its transformative promise. Judicial interpretation acts as a catalyst for broader social change, not a replacement. The ongoing presence of untouchability despite its constitutional abolition reflects not a failure of constitutional vision but the limitations of legal institutions in changing deeply divided societies.

4. Social Reality at 75: Implementation and Enforcement Gaps

4.1 Persistence of Untouchability Practices in Contemporary India

Seventy-five years after the constitution abolished untouchability, caste-based exclusion still appears in rural and urban India, often avoiding formal legal recognition. While overt practices like temple entry restrictions have become less visible, subtler and more harmful forms of untouchability persist, especially in housing, access to common resources, employment, and social interaction. These practices are often accepted as “custom,” “tradition,” or “community choice,” allowing them to escape scrutiny under Article 17.

Empirical studies and government data show that social segregation is still widespread, particularly in rural areas where Dalit communities are spatially separated from dominant caste neighbourhoods.¹⁷ Reports indicate practices such as separate utensils, denial of entry into non-Dalit homes, exclusion from community events, and caste-based seating in schools continue. This persistence suggests that abolishing untouchability in law has not led to a societal acceptance of equality norms.

Moreover, the persistence of untouchability is not solely a result of social conservatism; it is

¹⁵ Upendra Baxi, “The Avatars of Indian Judicial Activism,” in *Exploring Law and Poverty* (1988).

¹⁶ Granville and Austin, *Working a Democratic Constitution: The Indian Experience* 79–83 (Oxford Univ. Press 1999).

¹⁷ National Commission for Scheduled Castes, *Annual Report* (2021–22).

also strengthened by economic dependency and power imbalances. Article 17's promise thus faces a deeply unequal social structure that the law struggles to change.

4.2 Structural Barriers: Policing, Prosecution, and Underreporting

A significant enforcement gap exists concerning Article 17 within the criminal justice system. Even with laws like the Protection of Civil Rights Act, 1955, and the SC/ST (Prevention of Atrocities) Act, 1989, the rates of reporting, investigation, and conviction remain low.¹⁸ This gap is not accidental but structural.

Policing often reflects social bias. Complaints of caste discrimination are frequently trivialised, misclassified, or discouraged when filed. First Information Reports may not be registered, or caste-based elements may be removed, weakening the legal case from the start.¹⁹ This institutional reluctance undermines the effectiveness of anti-discrimination laws and promotes a culture of impunity.

Underreporting is a persistent issue. Victims fear social retaliation, economic boycotts, and physical violence, which keeps them from seeking help from legal institutions. Studies show that Dalit complainants often face counter-cases, social ostracism, or loss of job opportunities after asserting their rights.²⁰ The law's dependence on victim-initiated complaints places an unequal burden on those already marginalised.

Prosecution adds to these challenges. Delays, hostile witnesses, and a lack of sensitivity among prosecutors contribute to low conviction rates. As a result, the constitutional abolition of untouchability mostly exists at a theoretical level, while social enforcement mechanisms continue to shape daily life.

4.3 Manual Scavenging, Social Boycott, and Everyday Discrimination

Manual scavenging is one of the starkest contradictions between constitutional bans and social reality. Despite legal prohibitions and repeated judicial actions, the practice continues, driven by caste-based occupations and neglect from municipalities. The ongoing reality of manual scavenging shows how untouchability adapts through economic pressure rather than blatant coercion.²¹

Likewise, social boycotts act as informal yet powerful means of enforcing caste rules. Denying access to markets, water sources, jobs, and community areas serves as collective punishment

¹⁸ National Crime Records Bureau, *Crime in India 2022* (Atrocities against SCs).

¹⁹ Human Rights Watch, *Broken System: Dysfunction, Abuse, and Impunity in the Indian Police* (2009).

²⁰ Smita Narula, "Broken People: Caste Violence Against India's Untouchables," Human Rights Watch (1999).

²¹ *Supra* note 7.

against people or groups who assert their constitutional rights. These actions are rarely prosecuted as violations of Article 17; instead, they are treated as personal disputes or community matters.²²

Everyday discrimination—like being denied housing rentals, facing biased workplace practices, and experiencing segregation in schools—further illustrates the limits of legal abolition. These forms of discrimination often do not meet the threshold for criminal prosecution, yet collectively reinforce caste hierarchies. The constitutional focus on the “practice” of untouchability struggles to address these widespread, normalised exclusions.

The endurance of such practices highlights a key limitation: although Article 17 legally abolishes untouchability, it does not automatically change the social relations that support it.

4.4 Access to Justice and Institutional Failures

Access to justice varies greatly and is deeply divided along caste lines. Legal solutions under Article 17 and related laws assume communities know their rights, trust institutions, and have the means to act—conditions often lacking among affected groups. Legal aid programs, though required by the Constitution, are underfunded and not effectively aimed at addressing caste-based discrimination.²³

Judicial remedies are often delayed and difficult to obtain. Litigation can be expensive, lengthy, and socially risky. Witness protection programs and support for victims are inconsistently applied, further discouraging people from using the justice system.

Despite Article 17 providing a strong constitutional mandate, its enforcement is hindered by institutions that still function within caste-based social structures. Local governing bodies often prioritise social stability over adherence to constitutional mandates. Thus, the divide between constitutional promises and lived experiences is not just social but deeply rooted in institutional issues.

4.5 Constitutional Silences, Data Gaps, and the Politics of Invisibility

A key but overlooked aspect of the failure to achieve Article 17 is the constitutional and institutional silences that make caste-based discrimination statistically and administratively invisible. Although legal frameworks exist to outlaw untouchability, the lack of consistent, detailed, and clear data on everyday caste discrimination hampers both accountability and reform. Data collection mostly targets extreme forms of violence. It leaves everyday practices

²² Law Commission of India, 272nd Report on *Assessment of Statutory Frameworks* (2017).

²³ *State of Bihar v. Kameshwar Singh*, AIR 1952 SC 252 (observations on access and equality).

of exclusion, such as housing discrimination, social boycotts, and workplace segregation, largely unrecorded.²⁴

This selective visibility creates a misleading image of progress. A decline in reported cases is often seen as a sign of social change. However, it might actually indicate underreporting, misclassification, or reluctance among officials to acknowledge caste-based violations. The constitutional promise of Article 17 thus faces a contradiction: violations that are not recorded are treated as if they do not exist. This invisibility weakens the capacity of courts, legislatures, and policymakers to respond effectively to the ongoing presence of untouchability in modern times.

Moreover, the lack of institutional motivation to acknowledge caste discrimination fosters systemic denial. Local administrations often label caste-based issues as “personal” or “community” conflicts to sidestep the application of legal protections. This approach not only weakens legal remedies but also depoliticises caste oppression by framing it as an exception rather than a fundamental issue.²⁵

Judicial forums are also limited by these data gaps. Courts make decisions based on the cases presented to them, which represent only a small fraction of actual violations. As a result, jurisprudence concerning Article 17 can become reactive. It often addresses individual cases without fully engaging with wider patterns of exclusion. This limitation reinforces the need for institutional mechanisms that actively identify and document caste-based discrimination beyond just criminal prosecution.²⁶

The politics of invisibility also interacts with caste-based power dynamics. When dominant social groups control local governance, reporting mechanisms, and dispute resolution forums, constitutional rights frequently give way to social conformity. In these environments, silence itself acts as a form of governance, allowing discriminatory practices to persist under the appearance of legality and order. Article 17’s constitutional mandate is therefore neutralised not through open opposition, but through systematic neglect.²⁷

To address these silences, we must rethink enforcement beyond just penal law. Social audits, caste-disaggregated data collection, and administrative reporting should be seen as constitutional requirements rather than simple policy decisions. Without institutional acknowledgement of the everyday realities of untouchability, the abolition promised by Article

²⁴ *Supra* note 17.

²⁵ *Supra* note 20.

²⁶ Upendra Baxi, “The Crisis of the Indian Legal System,” in *Law and Poverty* (1988).

²⁷ Marc Galanter, *Competing Equalities: Law and the Backward Classes in India* (Univ. of California Press 1984).

17 risks being officially complete yet socially empty. The challenge after seventy-five years is not just to outlaw discrimination but to ensure it is constitutionally recognised.

CONCLUSION

Article 17 is one of the strongest statements of affirmation regarding India's commitment to social justice, 75 years later, under constitutional governance. Its total prohibition against 'untouchability' was a result of moral clarity seldom found in constitutional language. While Article 17 has successfully revealed caste-based exclusion as illegitimate, has enshrined dignity and equality within the public law concept, and has created a powerful normative framework for resisting social oppression in a constitutional context, it remains an incomplete social revolution.

The ongoing existence of caste-based discrimination demonstrates that constitutional transformation cannot be completed solely through legal prohibitions. Enforcement gaps, institutional bias, a lack of reporting, and social resistance all limit the realisation of the objectives of Article 17. The failure to implement the constitutional vision is not a failure of constitutional vision; it is a failure of implementation of Article 17.

Article 17's success illustrates the larger truth that transformative constitutionalism is dependent on us. Law initiates the process of change, but law cannot finish the process of change. Providing adequate education regarding social transformation, economic restructuring, political will, and sustained institutional reform is essential to the abolition of untouchability. Courts can interpret, legislatures can enact, and administrations can enforce. Social democracy ultimately must exist in practice.

Article 17 at 75, therefore, represents both a landmark constitutional success and a reminder of unfinished constitutional responsibility. Its enduring relevance lies not in celebrating its existence but in recommitting to its transformative mandate. The constitutional abolition of untouchability is complete in law; its eradication in society remains a task for the future.