

ISSN: 2582-6433



INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS

Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed 6th Edition

VOLUME 2 ISSUE 7

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis



IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can

bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



14th, 2019

Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC - NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March

Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr.Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



methodology and teaching and learning.

Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

CRITICAL ANALYSIS OF PROTECTION OF CIVIL RIGHTS ACT 1955 WITH REFERENCE TO ARTICLE 17 OF THE CONSTITUTION OF INDIA

Authored By- Alan V. Avanesh

ABSTRACT

Caste Discrimination in India played a major role in the poverty that we see in the country today. There were several social evils that were practiced in India among which one major social evil was untouchability. Untouchability was a practice that barred a certain community of people from enjoying their basic human rights. This community of people were called as untouchables and were not provided access to proper education, entry into temples and usage of public places. The Constitution of India was the first legal document that aimed for the betterment of these so called untouchables by banning the practice of Untouchability and imposing punishments for its practice. Article 17 of the Constitution of India abolished the practice of untouchability and imposed punishments for the same but to provide more clarity with respect to the degree of punishments, the Protection of Civil Rights Act of 1955 was passed. In the present study, the authors employ doctrinal research to analyze effect of the Protection of Civil Rights Act in India today .The study aims to evaluate as to why untouchability is practiced in many parts of the country despite legislations like the Protection of Civil Rights Act had been passed and been in effect for almost 68 years. The study revealed that the Protection of Civil Rights Act of 1955 needs to be amended for the overall betterment of the people belonging to these so-called untouchable communities.

Keywords: Caste Discrimination, Human Rights, Untouchability, Punishments, Protection of Civil Rights Act

1. Introduction to the Protection of Civil Rights Act 1955

Based on Article 17 of the Constitution of India¹, the Untouchability (Offences) Act 1955 was enacted on 8th May 1955. The act came into force on 1st June 1955. It aimed for the complete eradication of the practice of untouchability in India by providing various punishments for the same. This act imposed a 6-month imprisonment or a fine of Rs 500 for anyone who was guilty of practicing untouchability. This Act also contained provisions for increasing the punishment in case of subsequent offences against untouchables. However, despite all the provisions for punishing the practice of untouchability there was very little change in society. So, the Untouchability (Offences) Act of 1955 was amended on September 2nd 1976 and was renamed as Protection of Civil Rights Act of 1955.

The Protection of Civil Rights Act² had far more stringent methods to eradicate the practice of untouchability when compared to the Untouchability (Offences) Act of 1955. The main legislative intent of the Protection of Civil Rights Act of 1955 was to prescribe punishments for the preaching and practice of Untouchability for the enforcement of any disability arising therefrom and for any matters connected therewith. The Protection of Civil Rights Act provided various punishments like punishments for not allowing untouchables in temples, punishments for enforcing social disabilities, punishment to sell or buy goods on the grounds of untouchability and punishment for denying admission to untouchables into hospitals among many others. Other than this, the Protection of Civil Rights Act also provides powers to both the State and Central Government to provide additional punishments to penalise those who preach and practice untouchability in any way whatsoever.³

In the current study, the researcher aims to analyse the ambiguity with respect to the Protection of Civil Rights Act which must be made transparent so as to ensure that the people of India can exercise the rights conferred to them by the Statute in question. To analyze the paper's contention, the author seeks to adopt doctrinal-based research. The data collection method is qualitative, and the author's data is taken from a secondary source and mainly involves the use of texts. The author being a passive observer, relied on the "existing data" in the form of statutes, case laws, and other research articles. The author sourced his data from prominent

¹ INDIA CONST. art 17.

² Protection of Civil Rights Act, Act no 22 of 1955

³ *ibid.*

2. Historical Origin of Untouchability in India

In Ancient India, society was classified based on the caste system wherein which people were divided into four main castes based on their occupation namely, brahmins, kshatriyas, vaishyas and shudras. The Brahmins were mainly scholars and were considered to be the elite of society. The Kshatriyas consisted of kings and warriors. The Vaishyas consisted of business men and the Shudras consisted of menial workers who were considered to be untouchables. Initially the system was solely based on occupation but later the system became hereditary which meant that the son of a shudra would remain to be a shudra and he cannot be given an opportunity to choose a different occupation. The corruption in the caste system led to the exploitation of the shudras by the upper castes of society. The shudras who were deemed to be untouchables were deprived of their basic human rights. These so-called untouchables were subject to inhumane behaviour and exploitation for centuries.

The Constitution of India provided these so-called untouchables with their human rights in the form of Fundamental Rights which ensured that they can be treated humanely. The Right to Equality as per the Constitution of India (Article 14- Article 18) ensured that people that belonged to the lower castes can finally be given opportunities for their upliftment and be treated humanely by society. With respect to the evil practice of untouchability, Article 17 of the Constitution of India ensured that untouchability was abolished in India so as to protect the honour and dignity of people belonging to the lower castes.

3. Article 17 of the Constitution of India and its relation to the Protection of Civil Rights Act of 1955

Article 17 of the Constitution of India is the main constitutional provision that deals with abolishing the practice of untouchability in India. Thus this, constitutional provision can now allow Dalits to educate themselves, enter temples and use public places without any hindrance. Article 17 further penalised the commission of untouchability that may cause any kind of disabilities to the people belonging to these underprivileged communities. In the case of

People's Union for Democratic Rights v. Union of India,⁴ the Supreme Court that if untouchability was practised thereby violating Article 17 of the Constitution of India, the State has the obligation to take immediate action against the same.

Even though Article 17 penalised untouchability, there were very few details to the degree of punishment that would be imposed by the State on to the perpetrators of such an evil practice. Thus, this led to the Untouchability Offenses Act of 1955 which was later amended and renamed as Protection of Civil Rights Act of 1955 in 1976. The main features of the Protection of Civil Rights Act not only included providing a platform to the underprivileged to exercise their rights, but also the establishments of committees and sub committees within a specific area to implement the act and also provide adequate resources to the make the Dalits aware about their basic human rights. Under the Protection of Civil Rights Act, both fine as well as a period of imprisonment can be imposed by the court. Further, the Act also negates any sort of unreasonable grounds for the practice of untouchability such as history and philosophy and prevents people belonging to the dalit communities from being restricted to enter temples and access public places. The Act punishes anyone who forces people belonging to Dalit communities to take part in activities such as sweeping. Other than all of this, the Act also confers power on the Government to make rules in order to achieve the legislative intent of the Act and impose fines in any area of concern.

4. Shortcomings of the Protection of Civil Rights Act 1955

Despite, all the benefits of the Protection of Civil Rights Act, the practice of untouchability is still extremely rampant in many part of the country. Most people belonging to these Dalit communities are still not aware about their basic human rights and even if they were, they are not able to get justice for being exploited by the privileged members of society. Based on the Indian Human Development Survey (IHDS), the practice of untouchability is still followed in many parts of the country. Further, there are very few cases that have been registered under the Protection of Civil Rights Act 1955. Based on this report, people in many states in India still support the practice of untouchability. In order to explain the shortcomings of the Act, the researcher has analysed the shortcomings of the researcher has analysed the three branches of the government i.e.. the Executive, the Legislature and the Judiciary and with respect to the

⁴ *People's Union for Democratic Rights v. Union of India*, AIR 1982 SC

powers granted to each of the branch by the Protection of Civil Rights Act of 1955.

i) Drawbacks of the Legislature

The Legislature is concerned with making the laws. The main legislative intent for the enactment of the Protection of Civil Rights Act of 1955 is to prescribe punishments for preaching and practicing untouchability in any way. However, what this act fails to do, is that it doesn't define the term "untouchability". Section 2 of the Act which consists of the definitions for various terms that are used in the Act doesn't provide any definition to the term "untouchability". Even Article 17, the Constitutional provision based on which this Act was enacted and later came into force only states that all types of practices dealing with untouchability needs to be abolished. This would make it extremely difficult to determine whether an individual is being discriminated solely on the basis of untouchability especially when there is no provision within the Indian legal system defining the same. This would also make it extremely difficult to prove the mens rea of the person imposing such disabilities on the so-called untouchables since there exists an ambiguity as to what exactly is untouchability. In the case of *State of Karnataka v. Appa Balu Ingale and Others 1992*, the Court held that neither the Constitution nor the Protection of Civil Rights Act 1955 provide any proper definition to the term "untouchability".⁵

Further the definition of the term "civil right" under Section 2(a) of the Protection of Civil Rights Act 1955 which states that civil right refers to any right accruing to a person by reason of untouchability under Article 17 of the Constitution of India is very wide and ambiguous as since there is no definition for untouchability, then it would be difficult to determine the rights that may be accrued to a person due to the abolishment of untouchability. Thus without providing a definition to the term "untouchability", the rights of the Dalits will not be protected.

The only provision within the Act that provides some clarity with respect to the meaning of the term "untouchability" is Section 7 A of the Protection of Civil Rights Act of 1955 which clearly states that certain forced labour such as sweeping or removing the carcass of an animal is considered as a disability that is imposed on the Dalits by the privileged members of society.

⁵ State of Karnataka v. Appa Balu Ingale and Others (1992), AIR 1993 SC 1126

However, the problem with even this particular provision is that it fails to adequately define the term “untouchability” as it only deals with the kind of forced labour that constitutes the disability imposed by the practice of untouchability. Further Section 7 A is not a definition clause and provides a restrictive meaning to the term “untouchability” as untouchability can refer to acts not related to forced labour.

The legislative intent of the statute was to assist in the abolishment of untouchability by imposing the punishments for the same but the statute in itself fails to provide a proper meaning for the practice that it aims to abolish. Thus, it was indeed imperative for the Legislature to ensure that the term “untouchability” has been defined under the Protection of Civil Rights Act of 1955 and such definition is inclusive in nature so as to broaden the scope for interpreting untouchability which in turn would protect the fundamental rights of people belonging to these Dalit communities.

ii) Drawbacks of the Executive

The Executive enforces the laws, and ensures its effective implementation. Section 15 A of the Protection of Civil Rights Act confers power on the State Governments to make Committees and provide specific Courts to deal with cases related to untouchability. However, most State Governments have not played any role in setting up proper committees and appointing the appropriate officers for the proper implementation of the Act. Further Section 10 A allows the State to impose huge fines in areas in which untouchability is still being practiced. Despite all of this there are several States like Madhya Pradesh and Bihar where the practice of untouchability is rampant and the State Governments have not take the necessary steps for the proper implementation of the Act such as the imposition of fines and the establishment of appropriate committees that would help to combat the evil practice of untouchability. The negligent implementation of the Act by the Executive is one that violates the fundamental rights of the people belonging to the Dalit communities as per Article 17 of the Constitution of India.⁶

iii) Drawbacks of the Judiciary

The Judiciary interprets the laws and there has been several instances wherein which the Judiciary had adopted a restrictive interpretation of the Protection of Civil Rights Act of 1955.

⁶ Supra. Note 3

This can be seen especially with regards to entry into temples. Section 3 of the Act clearly states that anyone who imposes religious disabilities on the lower castes on the basis of untouchability will be imprisoned for a period between 1 to 6 months and fined an amount between rupees 100 to rupees 600. However, this is only with regards to Hindu temples as can be seen in the case of *State v. Puran Chand* wherein which the Madhya Pradesh High Court stated that a Jain temple can restrict entry of a non-jain which in this case was the complainant who belonged to the Scheduled Caste⁷. This restrictive interpretation of the act was also seen in the case of *Shri Ventataramana v. State of Mysore* wherein which the Supreme Court held that a denominational temple which was only accessible to Hindus belonging to one particular denomination can restrict entry to people who do not belong to that denomination.⁸ In the case of *R.S. Raghunath v. State of Karnataka and Anr*, the applicants were denied entry into hospital but this was not considered violative of Section 5 of the Protection of Civil Rights Act because the hospital in the current case was a veterinary hospital.⁹ The restrictive interpretation coupled with no proper definition for “untouchability” leads to people belonging to these dalit communities losing their faith in the law and justice system of the country. The ambiguity in the statute along with its restrictive interpretation would make it very difficult for the underprivileged communities to exercise their rights.

Another major issue with the judiciary is the large number of cases that are pending with respect to the Protection of Civil Rights Act, a proper judicial mechanism hasn't been set up for the effective disposal of cases related to the practice of untouchability as expressed under Section 15 A of the Protection of Civil Rights Act of 1955. The load of cases at the Courts are increasing with the passage of time and very few civil rights cases get the timely justice that it rightfully deserves. Thus, it becomes imperative that the Judiciary must broaden the scope for interpretation for the Protection of Civil Rights Act especially when there are several ambiguities within the aforementioned legislation.

5. Suggestion

Through the study, the researcher hopes to suggest the new changes that could be brought forward to the Protection of Civil Rights Act in order to ensure that the underprivileged

⁷ State v. Puran Chand (2014), 1955 CriLJ 947

⁸ Shri Ventataramana v. State of Mysore, (1958) AIR 255

⁹ R.S. Raghunath v. State of Karnataka and another, 1992 AIR 81 1991 SCR Supl

communities can peacefully enjoy their fundamental rights without being subject to the tyrannical malpractice known as untouchability which has oppressed them for centuries. For the same, the researcher believes that it would be imperative for the Protection of Civil Rights Act to be amended so as to provide a proper definition to the term “untouchability” which is inclusive in nature, to broaden the scope for interpretation of the Act by the Judiciary and to also have greater involvement from the Central and State Governments with respect to the setting up of committees which deal with combating untouchability.

6. Conclusion

The Protection of Civil Rights Act of 1955, which was based on Article 17 of the Constitution of India may have been enacted and implemented for the overall welfare of the people belonging to lower castes but its ambiguity and narrow interpretation has led to its downfall. Further, the Central and State Governments need to establish committees that would help in research and spread awareness to these people belonging to the Dalit communities about their humane thereby ensuring their overall betterment. However, there is still hope left for the Act as it does provide stringent punishments to penalise those who enforce disabilities on the lower caste people but changes need to be made so as to effectively punish those who commit offences towards the lower caste people. Hence, the researcher concludes his study by stating that amendments need to be made to provide transparency to the Protection of Civil Rights Act of 1955 and action must be taken by the Judiciary to widen the scope of interpretation so as to completely eradicate the practice of untouchability in India.