

CASTE DISCRIMINATION, HUMAN RIGHTS AND CONSTITUTIONAL RIGHTS: A STUDY ON INDIAN PERSPECTIVE

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Abstract

Caste-based discrimination and untouchability is not only social problem but it is problem that creates hurdles to the development of the nation. Without the ending of caste-based discrimination and untouchability, there is no possibility of development of the nation. The economic, political, and social development of the nation is based on the equality of all citizens. All of the freedom fighters of India strongly opposed the caste system.¹ Bhagat Singh, Jyotiba Phule, Erode Venkatappa Ramasamy Pariyar, Dr. Bhim Rao Ambedkar, and many more condemned the caste-based inequalities and discrimination. They all said in one rhythm that caste-based discrimination should be abolished because it is an inhuman, cruel, and rubbish system. They all argued that the Hindu religion is the root of caste-based discrimination. In present research researcher has used secondary source of data which were collected from Books, Articles and through internet sources.

Keywords: Caste discrimination, Untouchability, Human Rights, Constitution, India.

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¹ Dr S. K. Bhadarge, Human rights and Untouchability: Analytical study of the thoughts of Dr B. R. Ambedkar 76 (Research Guru: Online Journal of Multidisciplinary Subjects, Vol. 13 Issue 3, December 2019).

1. INTRODUCTION

In the present day, there is a historic movement for all untouchables to fight for their basic human rights and ideals of fairness, equality, liberty, and so on. India, a rising star and a more significant country on the global stage, cannot continue to ignore injustice and oppression within its boundaries. Dalit status has historically been associated with traditional occupations regarded as ritually impure in the Hindu traditional society of India, such as scavenging, sweeping, meat selling, leather work, hunting and drum beating, butchering or removal of rubbish, and animal carcass waste. Untouchables performed manual chores such as cleaning streets, latrines, and sewers. These actions were seen to be polluting to the environment. These actions were seen to be polluting to the environment. Individual contamination was thought to be contagious. As a result, Dalits in India were frequently separated and denied full participation in Hindu society. Untouchables and upper Hindus are occasionally monitored to avoid inadvertent contracting.²

2. OBJECTIVES

- To analyze the caste-based discrimination and untouchability in India.
- To understand the human rights and fundamental rights for the upliftment of the Scheduled Caste population.
- To analyze the caste-based discrimination that violates International Human Rights and Fundamental Rights provided by the Constitution of India.
- To provide valuable suggestions.

3. RESEARCH GAP

For the present study, the researcher had read many papers and books to understand the concept regarding the topic. Many researchers and academicians focussed on the Human Rights and Fundamental Rights provided to the Scheduled Caste community. But none of them focused on both Human Rights and Fundamental Rights. In the present research work, the researcher has focused on both International Human Rights and Fundamental Rights provided by the Constitution of India.

4. MEANING AND CONCEPT OF UNTOUCHABILITY

² Dr. Lajwant Singh, Movement for the Changing Social Status of Untouchables in India: A Sociological Study 138 (International Journal of Humanities Social Sciences and Education (IJHSSE), Volume 2, Issue 1, January 2015)

Untouchability means not being permitted to touch or not capable of being touched or reached. There are several quotations on untouchability which are mentioned below:

- Dr. Bhim Rao Ambedkar, *“Caste is a state of mind. It is a disease of mind. The teachings of the Hindu religion are the root cause of this disease. We practice casteism and we observe Untouchability because we are enjoined to do so by the Hindu religion. A bitter thing cannot be made sweet. The taste of anything can be changed. But poison cannot be changed into nectar.”*³
- George L. Hart, *“In this society, certain occupational groups were thought to be involved in controlling the malevolent supernatural forces; as an example, who played the drums during battles and solemn events such as births and deaths. People from these occupational groups came to be avoided by others, who believed that they were “dangerous and had the power to pollute the others”*⁴
- Nripendra Kumar Dutt, *“The concept of untouchability originated from the “pariah” like treatment accorded to the indigenous people of India by the early Dravidians, and that the concept was borrowed by the Indo-Aryans from the Dravidians”*⁵

5. UNIVERSAL DECLARATION OF HUMAN RIGHTS AND FUNDAMENTAL RIGHTS TO SCHEDULED CASTE PEOPLE

In the Universal Declaration of Human Rights, there is no specific provision regarding the Rights of Scheduled Caste people but there are many rights that provide equality for all human beings. In the Constitution of India, 1950 many fundamental rights are mentioned for the betterment and upliftment of the Scheduled Caste people of the country. Following are the rights provided by UDHR and the Constitution of India, 1950 for the indigenous people-

Table 1.1 Synoptic views of provisions of the Universal Declaration of Human Rights which is related to the Scheduled Castes community.

Articles of UDHR	Provision in the Universal Declaration of Human Rights
Article 1 ⁶	<i>“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”</i>
Article 3 ⁷	<i>“Everyone has the right to life, liberty and the security of person.”</i>

³ Suvira Jaiswal, Some Recent Theories of the Origin of Untouchability; A Historiographical Assessment 218-229 (*Proceedings of the Indian History Congress*. Volume 39, Issue 1, 1978).

⁴ *Ibid.*

⁵ *Ibid.*

⁶ See, Universal Declaration of Human Rights, 1948, art. 1.

Article 4 ⁸	<i>“No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.”</i>
Article 5 ⁹	<i>“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”</i>
Article 7 ¹⁰	<i>“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.”</i>
Article 10 ¹¹	<i>“Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”</i>
Article 16 ¹²	<i>“1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. 2. Marriage shall be entered into only with the free and full consent of the intending spouses. 3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.”</i>
Article 17 ¹³	<i>“1. Everyone has the right to own property alone as well as in association with others. 2. No one shall be arbitrarily deprived of his property.”</i>
Article 18 ¹⁴	<i>“Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”</i>
Article 23 ¹⁵	<i>“1. Everyone has the right to work, to free choice of employment, to just</i>

⁷ Ibid. art. 3.⁸ Ibid. art. 4.⁹ Ibid. art. 5.¹⁰ Ibid. art. 7.¹¹ Ibid. art. 10.¹² Ibid. art. 16.¹³ Ibid. art. 17.¹⁴ Ibid. art. 18.¹⁵ Ibid. art. 23.

	<p><i>and favourable conditions of work and to protection against unemployment.</i></p> <p><i>2. Everyone, without any discrimination, has the right to equal pay for equal work.</i></p> <p><i>3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.</i></p> <p><i>4. Everyone has the right to form and to join trade unions for the protection of his interests.”</i></p>
Article 27(1) ¹⁶	<p><i>“Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.”</i></p>

Source: Universal Declaration of Human Rights, 1948.

Table 1.1 shows that there are many rights which are related to the Scheduled Caste community. The preamble of the Universal Declaration of Human Rights does not mention these rights are specifically related to the Scheduled Caste community but if we go through these provisions then we should find that these rights are related to the marginalized section of the society. The brief introductions of the Universal Declaration of Human Rights are mentioned as follows:-

Table 1.2 Synoptic view of Constitutional Safeguard for the protection of Scheduled Castes.

Articles of Constitution of India, 1950.	Provision in Constitution of India ,1950.
Article 17 ¹⁷	<p>Abolition of Untouchability-</p> <p><i>“Untouchability” is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of “Untouchability” shall be an offence punishable in accordance with law.</i></p>
Article 23 ¹⁸	<p>Prohibition of traffic in human being and forced labour –</p> <p><i>“Traffic in human beings and ‘begar’ and other similar forms of forced labour are prohibited, and any contravention of this provision shall be an offence punishable in</i></p>

¹⁶ Ibid. art. 27 (1).

¹⁷ See, Constitution of India, art. 17.

¹⁸ Ibid. art. 23.

	<i>accordance with law.”</i>
Article 24 ¹⁹	<i>Prohibition of employment of children in factories, etc.-</i> <i>“No child below the age of fourteen years shall be employed to work in factory or mine or engaged in any other hazardous employment.”</i>
Article 25(2)(b) ²⁰	<i>Freedom of conscience and free profession, practice and propagation of religion -</i> <i>“Providing for social welfare and reform or the throwing open to Hindu religious institutions of a public character to all classes and sections of Hindus.”</i>
Article 24 ²¹	<i>Prohibition of employment of children in factories, etc. –</i> <i>“No child below the age of fourteen years shall be employed to work in factory or mine or engaged in any other hazardous employment.”</i>
Article 46 ²²	<i>Promotion of educational and economic interest of Scheduled Casts, Scheduled Tribes and other weaker sections-</i> <i>“The state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”</i>
Article 15(4) ²³	<i>Prohibition of discrimination on the ground of religion, race, caste, sex, or place of birth-</i> <i>“Nothing in this Article or in clause (2) of article 29 shall prevent the state from making a special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.”</i>
Article 29(2) ²⁴	<i>Protection of interest of minorities-</i> <i>“No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on ground only of religion, race, caste, language or any of them.”</i>
Article 243(D) ²⁵	<i>Reservation of seats for the Scheduled Castes and Scheduled Tribes in Panchayat</i>

¹⁹ Ibid. art. 24.

²⁰ Ibid. art. 25(2)(b).

²¹ Ibid. art. 24.

²² Ibid. art. 46.

²³ Inserted by the constitution (93rd Amendment) Act, 2005.

²⁴ See, Constitution of India, art. 29(2).

²⁵ Ibid. art. 243D.

	<p><i>“(1) Seats shall be reserved for</i></p> <p><i>(a) the Scheduled Castes, and</i></p> <p><i>(b) the Scheduled Tribes</i></p> <p><i>in every Panchayat and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in the total Population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat.</i></p> <p><i>(2) Not less than one-third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be the Scheduled Tribes.</i></p> <p><i>(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Panchayat shall be reserved for women and such seats may be allotted by rotation to different constituencies in a Panchayat.</i></p> <p><i>(4) The offices of the chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, Scheduled Tribes and women in such manner as the legislature of State may, by law provide.</i></p> <p><i>(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause(4) shall cease to have effect on the expiration of the period specified in article 334.</i></p> <p><i>(6) Nothing in the part shall prevent the Legislature of a state from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats in favour of backward class of citizens.”</i></p>
Article 243T ²⁶	<p><i>Reservation of seats Reservation of seats for the Scheduled Castes and Scheduled Tribes in Municipality-</i></p> <p><i>“(1) Seats shall be reserved for the Scheduled Castes and Scheduled Tribes in every Municipality and the number of seats so reserved shall bear, as nearly as may be, the same proportion to the total number of seats to be filled by direct election in that Municipality as the population of the Scheduled Castes in the Municipal area or of the Scheduled Tribes in the Municipal area bears to the total Population of that</i></p>

²⁶ Ibid. art. 243T

	<p><i>area and such seats may be allotted by rotation to different consistencies in a Municipality.</i></p> <p><i>(2) Not less than one -third of the total number of seats reserved under clause (1) shall be reserved for women belonging to the Scheduled Castes or, as the case may be, the Scheduled Tribes.</i></p> <p><i>(3) Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality shall be reserved for women and such seats may be allotted by rotation to different Constituencies in a Municipality.</i></p> <p><i>(4) The Offices of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a state may, by law, provide.</i></p> <p><i>(5) The reservation of seats under clauses (1) and (2) and the reservation of offices of Chairpersons (other than the reservation for women) under clause(4) shall cease to have effect on the expiration of the period specified in article 334.</i></p> <p><i>(6) Nothing in the part shall prevent the Legislature of a state from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the municipalities in favour of backward class of citizens.”</i></p>
Article 330 ²⁷	<p><i>Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the peoples: -</i></p> <p><i>“(1) Seats shall be reserved in the House of the people for-</i></p> <ul style="list-style-type: none"> <i>(a) the Scheduled Castes,</i> <i>(b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam, and</i> <i>(c) the Scheduled Tribes in autonomous districts of Assam.</i> <p><i>(2) The number of seats reserved in any State or Union Territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall, bear as nearly as may be, the same proportion to the number of seats allotted to that state or Union Territory in the House of the people as the population of the Scheduled Castes in the state or Union Territory or of the Scheduled Tribes in the State or part of the state or Union Territory , as the case may be, in respect of which seats are so reserved ,</i></p>

²⁷ Ibid. art. 330

	<p>bears to the total population of the State or Union Territory.</p> <p>(3) Notwithstanding anything contained in clause (2), the number of seats reserved in the House of the people for the Scheduled Tribes in the autonomous districts of Assam shall bear to the total number of seats allotted to that State a proportion not less than the population of Scheduled Tribes in the said autonomous districts bears to the total population of the State.”</p>
Article 332 ²⁸	<p>Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States: -</p> <p>“(1) Seats shall be reserved for the Scheduled Castes and the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam, in the Legislative Assembly of every State.</p> <p>(2) Seats shall be reserved also for the autonomous districts in the Legislative Assembly of the State of Assam.</p> <p>(3) The Number of seats reserved for the Scheduled Castes or the Scheduled Tribes in the Legislative Assembly of any State under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats in the Assembly as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State or part of the State, as the case may be, in respect of which seats are so reserved, bears to the total population of the State.”</p>
Article 16(4) ²⁹	<p>Equality of opportunity in respect of public employment -</p> <p>“Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under State.”</p>
Article 16 (4A) ³⁰	<p>Equality of opportunity in respect of public employment-</p> <p>“Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State are not adequately represented in the services under the State.”</p>
Article 335 ³¹ -	<p>Claims of Scheduled Castes and Scheduled tribes to services and</p>

²⁸ Ibid. art. 332.

²⁹ Ibid. art. 16(4).

³⁰ Inserted by the Constitution (77th Amendment) Act 1955.

	<p>posts-</p> <p><i>“The claims of the members of the Scheduled Castes and Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with the affairs of the Union or of a State.</i></p> <p><i>Provided that nothing in this article shall prevent in making of any provision in favour of the members of the Scheduled Castes and the Scheduled Tribes for the relaxation in qualifying marks in any examination or lowering the standards of evaluation, for reservation in matters of promotion to any class or classes of services or posts in connection with the affairs of the Union or of a State.”</i></p>
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Source: Constitution of India, 1950.

Table 1.2 depicts the provisions of different rights that are provided to the safeguard of the Scheduled Caste community of the country. The makers of the constitution were well aware of the caste-based differences in India. So they provided different rights for the welfare of the SCs people of the country. These rights are provided because of the social, economic, and political development of these communities.

6. CASTE DISCRIMINATION VIOLATES CONSTITUTIONAL AND HUMAN RIGHT

Caste-based discrimination violates different rights mentioned by the Constitution of India, 1950, and the Universal Declaration of Human Rights, 1950. Following are some caste-based discrimination that violates these rights:

- **Untouchability:** Untouchability is the basic feature of caste-based society. The Indian caste system started with the concept of untouchability. People of upper caste consider Scheduled Castes people as impure, and they treat inhuman to lower caste people. People of the Scheduled Caste community are subject to humiliation and harassment in the name of the caste. Untouchability is forbidden by Article 17 of the Constitution of India, 1950, and declares it is unlawful. Untouchability also violates Article 1 and Article 3 of the Universal Declaration of Human Rights.
- **Forced labour:** Forced labour also covers the concept of untouchability and caste-based discrimination. In many states in India Scheduled Castes people are subject to forced labour. They are used to take beggars. In many states where the economic

³¹ See, Constitution of India, art. 335

status of Scheduled Castes people is not good, they are helpless. There are no options other than a beggar to fill their fulfilment of necessities. The concept of forced labour is prohibited under Article 23 of the Constitution of India, 1950, and Article 4 of the Universal Declaration of Human Rights.

- **Social Discrimination:** The people of the Scheduled Castes community are subject to social discrimination by the so-called upper caste people. Scheduled Caste people are not allowed to enter common places of the village like restaurants, *Dhaba*, *ghat*, temple, etc. Even in schools Scheduled Caste pupil is subject to caste-based discrimination. They are not allowed to take meals with upper-caste students. This type of discrimination is prohibited by Article 15 of the Constitution of India, 1950, and Article 7 of the Universal Declaration of Human Rights.
- **Sexual Harassment:** In some places of India Scheduled Caste girls and women are subject to sexual harassment by the upper caste people. Upper caste people used as tools for sexual enjoyment to SC girls and women. This kind of sexual harassment is also prohibited by the Constitution of India and the Universal Declaration of Human Rights.³²
- **Discrimination on opportunity:** Scheduled Caste people are subject to discrimination in every field. There is social, political, and economic discrimination against Scheduled Caste people. For the upliftment of these marginalized groups, there are several enactments of rights in the Constitution of India and UDHR.

7. CONCLUSION AND SUGGESTIONS

Conclusion

India got independence on 15th of August 1947 but the Scheduled Castes people were still slaves of upper caste people. They did not get independence till 75 years of Independence. The Scheduled Caste people are subject to cruelty, harassment and humiliation. Even educated people do caste-based discrimination and face discrimination. In the rural area of the country religious institution is the main centre of caste discrimination. Scheduled Caste people were not allowed to enter into temple, they were forced to worship from very far away and take meals from different rows.

³² Tanika Godbole, Why India's Dalit women are vulnerable to sexual violence, available at <https://www.dw.com/en/why-indias-dalit-women-are-vulnerable-to-sexual-violence/a-55423556> (last visited on: 01-12-2023)

In rural areas of the country educational institutions are also affected by caste discrimination. Even teachers follow caste-based discrimination. It is the drawback of the country that caste-based discrimination is the main hurdle to national development.

Suggestions

- Sensitise the administration, police, and courts to reduce and eventually eliminate bias and apathy towards Scheduled Castes.
- Adequate publicity should be provided to the problem, solutions, and current events concerning atrocities and atrocity prevention.
- The proportion of SC people in administration, police, and courts at higher and decision-making levels should be enhanced.
- Atrocity prone areas should be identified & monitored regularly.
- The use of Information Technology should start & increased for atrocity prevention.
- Scheduled Castes Commissions should be established in every state.
- Inter Castes marriages should be promoted.
- Financial status of peoples belongs to Scheduled Tribes and Scheduled Castes should be improved by way of beneficial schemes of the Govt.
- Reservation policy in the field of Education and Job section must be strictly implemented.
- The provisions of the Constitution of India, 1950 and Universal Declaration of Human Rights should be strictly implemented.