
UNIT 3 STRUCTURAL VIOLENCE AGAINST DALITS, AND CONSTITUTIONAL SAFEGUARDS

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3.0 OBJECTIVES

The main objective of this Unit is to contextualize philosophy especially in setting right the social problems. It may provide the guidelines that help us to understand analyse and respond to the social, political, economic and cultural exploitations and the means to change them by using suitable tools.

Thus by the end of this Unit the learner will be able:

- to have an awareness on social structures;
- to identify the structures of violence in the society;
- to develop action plan to reduce structural violence;
- to trust in the constitutional and legal means than illegal ways;

3.1 INTRODUCTION

An institutionalised attempt to prevent any individuals or communities from the accession of available facilities and services by the dominant individuals or powerful communities through legal or illegal means and with open or hidden strategies can be called structural violence. The structural violence aims to obstruct development of dependent people or communities so that they remain backward and permanently dependent. The members of the dominant class enjoy social and economic advantages by keeping the under privileged always dependent. Structural violence is perpetuated not merely for economic or social gain but also for enjoying the subjugation of others. They also get pleasure from cultural imposition of the norms fixed by them for the members of the weak segment of the population in our society. Fulfilment of psychological satisfaction perpetuates violence.

Any systematic manipulation of knowledge, norms and information for effective control over social, political and economic domains of social life for the sake of exploitation or oppression can be identified as structural violence. Structural violence may be defined as a situation in which the social, political, economic, cultural and legal spheres function in such a way that they permit or encourage the segregation, discrimination, suppression or exploitation of the weaker sections of the community. It is a way of segregating a group of people from the social, political, economic and cultural domains of social life. The members of the Dalit communities are the most affected in India due to structural violence.

3.2 STRUCTURAL VIOLENCE AGAINST DALITS

Violence against Dalits can be considered as structural because of the following reasons. Individuals practice violence not as a result of personal enmity or individual displeasure but as a result of the socio cultural learning that are imbibed by the members of upper castes. Therefore violence is not due to inherent evils of any individual or caste but because of the inherent evils of caste system itself. In other words, caste system has got immoral forms of social, political, cultural and economic structures that permit or encourage violence to go unchecked.

Violent social spheres are systematically institutionalised. Society was divided on the basis of work. Social division was stabilised through inheritance and social obligation was demanded from people as ethical norms as sanctioned by religious scriptures. In such a social system, the social labour of the members of the upper castes was rewarded well and donation to them was accepted as a virtuous act, but members of the lower caste were not paid what were due to them.

There was no mechanism within the system that could rectify systemic problems. On the contrary there were very effective means to prevent any possible change. The members of the upper castes regard any change, however good they may be, as threat to social order, therefore should not be permitted. The attempt to change the oppressive practices by the sufferers leads to tension and conflict.

3.3 VARIOUS STRUCTURES OF VIOLENCE AGAINST DALITS

The institutionalised attempt to keep out Dalits from social order was systematically stabilized in Indian society. It started with the segregation of them from the social, political, economic and cultural domains of social life. We shall enumerate them one by one.

Cultural Structures of Violence

In earlier societies, life style of the members of a clan was regulated by customary morality. Each clan or community was self regulated. Thus it was autonomous and its norms were customary, binding on every member equally.

Caste system, the ancient social system of India, was clannish in one way and unique and different in another way. Caste norms were customary, because individual members of a particular caste could not make a moral choice against their own caste dharma. Varna dharma was binding on all the members of the

particular varna equally. Each member of a clan was self motivated to act what was obligatory to that person, and the person was not rewarded for fulfilling his/her duty. As one is just fulfilling ones *varna dharma* one is not eligible to enjoy any reward but the violation of it brings punishment which one receives without the feeling of revolt or grudges.

In India, customary morality was in operation not simply within the particular caste, but also it regulated the relations among the clans (castes). Caste system cannot be considered as clannish, because castes were not autonomous. Customary norms were not the choice of any clan but it was imposed upon them. The functional relations among the castes were established and stabilised with the introduction of customary morality that regulated inter caste relations. As the inter caste relations were bound by customary norms, even unjust norms were accepted without resistance For example the discriminatory practices like untouchability or isolated living areas were not imposed but accepted as customary morality (*jathi dharma*).

India was a wonderful land where the inter caste relations were streamlined with very strict and well ordered norms like a customary morality. But the order was well maintained for segregating and discriminating a section of the people.

As we are brought up with caste notions and feelings, we inherit convention of customary morality than self reflective and rational moral values of modern times. Thus we are not feeling an inhuman act like untouchability as an immoral act. Sometimes, many members of upper castes feel very comfortable by segregating and not allowing persons belonging to lower caste to participate in public functions and religious festivals. They consider such acts as virtuous acts instead of seeing them as heinous crimes. Discrimination is systematically inbuilt within the caste system and strengthened by the inheritance of caste awareness and its customs.

Here we have to make a clear distinction between the customary morality of clan system and caste system. Under clan system clannish norms bind on all its members equally and they are regulated fully from within. But caste morality binds differently on different groups and punishment is imposed from above. As the caste relations are bound by inter caste norms, external monitoring on the functions of the castes was made possible.

Social Structures of Violence

A lot of living traditions and cultures co-exist in India. The different traditions of the Hindu fold were brought within a well ordered and structured hierarchy through caste system. Some appreciate the caste system as an organ of social order. They claim that society is strengthened by the development and inheritance of skills through the division of labour. They argue that it built up social security by mutual support. But social division of labour led to the discrimination of people in the name of caste which in turn disintegrated society. Thus the ugliest element that we inherited from our tradition is the caste system. Ambedkar depicted it as “The most pathetic part of these traditions is an unwanted, ugly and inhuman structure called the *Caste System*. One cannot but feel ashamed of the caste system as this system continues to discriminate the human persons and stratify them into different groups.”

The Story of Dalits

The traditional social system of India considered Dalits as *untouchables*. Thus they have been treated the most degraded. As the people of high caste believed that the proximity of Dalits would pollute them they considered them to be untouchable. Even today they remain downtrodden, exploited and the least educated in Indian society.

The caste hierarchy excluded a section of society from the caste system and named them *outcastes*. Their service was extracted by the members of the higher castes and treated them as untouchables. For decades, they have been barred from sharing water, food and shelter. They are forced to live in ghettos. Until today, India's caste system has compelled them to perform the most inhuman jobs like the manual scavenging, skinning animals, disposal of the dead animals, cleaning streets and the like. Most of them still live as landless labourers, bonded labourers, child labourers by performing the most inhuman tasks, such as cleaning the toilet and disposal of human waste and so on.

Indian society very efficiently segregated them from her main stream. Dalits have been socially, culturally and politically subjugated and marginalized through thousands of years. It is found very difficult to get them out of the deep seated socio cultural agony. Thus, their redemption becomes a Herculean task. The Dalits experience the effects of untouchability in their day to day social, economical and political activities. The people of high castes hesitate to tolerate them coming up in life. They fear the upliftment of the members of SC and ST as a threat to their facilities and status.

Religious Structures of Violence

Sacred texts of Hinduism up held the divine origination of caste system. Law Books very meticulously streamlined social division of labour, restricted the upward movement of labourers and tied them to the profession attached to their caste through compulsory inheritance by birth. They made varna dharma morally bound service to society.

Religious structure happened to perpetuate violence against Dalits by deterring them from temple entry. Now a days the members of the low caste are allowed to participate in the temple worship especially in the major temples. But it is not possible for them to perform rituals as poojaries. The orthodox groups project God as the custodian of untouchability. Gods were shown as practitioners of untouchability.

The description of purity and impurity in front of God, elevated the pure and condemned the impure. The impure one who has no salvation in the other world may get a better birth in the following transmigration through his/ her dedicated service to the masters. On the contrary, the pure ones gain all the blessings from God and pleasures from the world.

Caste norms denied education to the Dalits. They were not allowed to read scriptures. Thus they did not have the knowledge of the tradition. Thus religion supported the caste system in keeping Dalts not only impure but uneducated as well. Their awareness and progress was deterred. The education on the Hindu scriptures and tradition would have opened their chance of becoming Archakas along with their entry into the temple. But that chance is very remote.

Economic Structures of Violence

The caste system is also an economic order that prevents Dalits from owning land or property. It is an exploitative economic arrangement. Caste, thus, becomes an instrument of exploitation. Traditional social order demands hard labour from the people of low caste. They are still serving as the landless farm workers, scavengers and bonded labourers. As they are underpaid, they are forced to live under inhuman conditions. They have been betrayed of rights over land or any earnable form of resources. In most part of the country Dalits are either small or marginal farmers or landless workers. The practice of social division of labour with the injunctions of varna dharma for many generations led to this situation.

Allocation of labour on the basis of caste was one of the fundamental tenets of the caste system. The rigid restriction of the movement of caste boundaries tied the members in their respective castes of their birth. The cultural conditioning of the low castes and the attitude of the upper castes are not undergoing much change.

At present, there are opportunities for those lower in the ranks to move up in the hierarchy through the capture of political power, the acquisition of land, and migration to other regions. Members of the back ward castes achieved noticeably in these regards. But Dalits being last in the hierarchy are remaining far away from the available facilities for improving their position in the social ranking. Therefore they stay socially and economically depressed.

Migration and the anonymity of the urban environment have in some cases resulted in the upward occupational mobility of some, but the majority continues to perform their traditional jobs. A lack of training and education avert them from seeking other forms of employment. Because of the fear of discrimination, many are not willing to other employment. In their native villages, the work space is limited. Neither the horizontal or vertical movement of Dalit workers is easy.

As part of village custom, Dalits are made to render free services in times of death, marriage, or any village function. The cleaning of the whole village, the digging of graves, the carrying of firewood and the disposal of dead animals are mostly done by the Dalits. A majority of the rural workforce from Dalit communities subsist on the menial wages. Those in urban areas work mostly in the unorganised sector.

It is estimated that around one million Dalits are manual scavengers. Manual scavenging is a caste-based occupation. The practice of manual scavenging continues in most of the states, though it is outlawed. The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 prohibits the employment of scavengers or the construction of dry (non-flush) latrines with imprisonment for up to one year and/or a fine as high as Rs.2,000/-. Offenders are also liable for prosecution under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In 1992, the government launched a national scheme that called for the identification, training and rehabilitation of safai karamcharis (cleaning workers). Government funds and other resources are available for the rehabilitation of scavengers, but no proper action has been taken towards this end. It is not the resource but the political will that comes against the rehabilitation of the scavengers.

Another group of abused Dalits are landless agricultural labourers who form the backbone of India's agrarian economy. In spite of many land reformation acts around eighty-six per cent of Dalit households are landless or near landless. Land is the prime asset in rural areas that determines an individual's standard of living and social status. Lack of access to land makes Dalits economically vulnerable. Their dependency is exploited by upper- and middle-caste landlords. Many labourers owe debts to their employers or other moneylenders.

Laws and regulations that prohibit the appropriation of Dalit lands are not properly implemented. The directions to allocate surplus government lands to scheduled castes and scheduled tribes have been largely ignored or manipulated by upper castes with the help of district administrations. In 1996, a door-to-door survey of two hundred and fifty villages in the state of Gujarat found that in almost all villages those who had title to land had no possession, and those who had possession had not had their land measured or faced illegal encroachments from upper castes. Many had no record of their holdings at all. Even those who had been offered land under agrarian reform legislation refused to accept it for fear of an upper-caste reaction.

Bonded labour is a terrible condition suffered by many Dalits. Bonded labour refers to the work in slave-like conditions in order to pay off a debt. Many financial assistance available to the members of SC/ ST communities are not availed or properly used by many. They found it easy to borrow money from their upper-caste neighbours. In most of the cases, they fail to repay and go into bondage. An estimated forty million people in India, among them fifteen million children, are bonded labourers working in slave-like conditions in order to pay off a debt. Due to the high interest rates charged and the abysmally low wages paid, the debts are seldom settled. The Bonded Labour System (Abolition) Act, 1976 abolishes all agreements and obligations arising out of the bonded labour system. It aims to release all labourers from bondage, cancel any outstanding debt, prohibit the creation of new bondage agreements, and order the economic rehabilitation of freed bonded labourers by the state. It also punishes attempts to compel persons into bondage with a maximum of three years in prison and a Rs.2,000/- fine. However, the extent to which bonded labourers have been identified, released, and rehabilitated in the country is negligible. A lack of political will in implementing the protective criminal legislations meaningfully sabotaged the constitutional promises.

Political Structures of Violence

The political space available for the members of SC/ ST under parliamentary system in India favoured them to represent people and hold offices. Reservation of political positions to Dalits is a compulsory component of the Constitution which is intended to empower them. It began to create tension between the earlier power holders and newly emerging Dalits in many areas of India. The orthodox and feudal minded people are not willing to accept low caste in the responsible positions. Some tolerate, some place ineffective and submissive Dalit members for the name sake and where ever it is not possible, some directly encounter with the law and the elected representatives. Manoranjan Mohanty points out that the rising democratic consciousness among dalits, the trend of self-assertion through politics, literature and social movements invited the wrath of the upper castes against them. The empowering attempt causes severe clashes between upper castes and the Dalits mainly in the rural areas.

It is noticed that the intensity of violence against the Dalits has been increasing. One reason, as we have seen, is the political tension. It is supplemented by increasing awareness among Dalits about their rights and their assertion to achieve them. Another reason, Prof. Mohanty finds is the economic reforms under globalization, liberalization and privatization. Economic reforms have put greater power and privileges in the hands of the upper caste elites by the state. It widens the gap between upper castes and Dalits. The backward castes that were traveling in the same boat of discrimination earlier are performing better due to the political and economic changes recently. Under a favourable political climate in many parts of India, the BCs made much economic gains especially under New Economic Policy. They in turn became new masters of oppression. Prof. Mohanty observes that the one sided economic well being has nurtured the upper caste ego which leads to the suppression of demands from the lower strata.

Media plays a big role in reporting the atrocities. What all atrocities that were unnoticed earlier, are now presented especially through visual media. This gives an impression of increasing atrocity. Human rights and Dalit organisations successfully reported and documented many atrocities. Yet, many atrocities go unreported.

There are many reasons for the continuation of atrocities against Dalits. The country is too large to allow close monitoring of all atrocities. In many places the local power structure dominated by the upper castes continues to hold its sway. The caste character of the state apparatus in many cases of atrocities favours the offenders instead of standing for law. There are many instances of police itself trying to hush up cases by refusing to file FIR. The law demands the authorities to be neutral. In fact, legal system favours Dalits. But the police being either from the upper caste or dependent on the upper caste hesitate to take action against the offenders. When the upper caste commits an atrocity on Dalit, the police often do not do the legal duty to please the upper caste.

Though the state has played an important role in protecting the rights of Dalits still the complicity of local state apparatus with upper caste interests has made the laws ineffective. The revenue official or the District Collector have the same location to operate in the hierarchical society. The large number of cases pending completion of investigation is an indication of this. The judiciary, especially the lower level judiciary is also part of the same situation. We see long delays in disposal of cases, large percentage of acquittals of the accused with very few convictions.

Check Your Progress I
Note: a) Use the space provided for your answer.
b) Check your answer with those provided at the end of the unit.
1) Why do we consider the violence against Dalits as structural violence?
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.....
.....
.....
.....

2) Increasing awareness and assertion lead to increase in conflict. How?

3.4 THE CONSTITUTION OF INDIA AND THE RIGHTS OF THE DALITS

The constitution of India guarantees equality of status and opportunity and freedom to all her citizens. It protects all individuals from discrimination on the grounds of religion caste or sex. Article 46 of the Constitution insists that the State shall promote with special care the educational and economic upliftment of the weaker sections of the people in particular of Scheduled Castes and Scheduled Tribes and shall protect them from injustice and all forms of exploitation. The Indian Constitution assures the above mentioned values in the chapters on Fundamental Rights and Directive Principles.

The Government of India enacted many acts, laws and rules at different intervals which uphold the values and spirit of the Constitution. The first among them was the Protection of Civil Rights Act, 1955(22 of 1955) with its sub section known as the Untouchability (Offences) Act, 1955. The Act of 1955 was revised periodically to strengthen its efficiency. Constitutional support to the Scheduled Castes and Scheduled Tribes received greater clarity and focusing with the Act enacted in 1989 known as the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989.

3.4.1. Provisions of the Protection of Civil Rights Act, 1955 Relating to Untouchability

The Protection of Civil Rights Act, 1955 prescribes punishment for the preaching and practice of “Untouchability” and for the enforcement of any disability arising there from for matters connected therewith. In the Act “civil rights” means any right accruing to a person by reason of the abolition of “untouchability” by article 17 of the Constitution. A number of important sections are given below.

Section 3 of the Act of 1955 identifies the practices of untouchability on the ground of preventing members of the out castes

- a)

from entering any place of public worship, which is open to other persons professing the same religion , or
- b)

from worshipping or offering prayers or performing any religious services in any place of public worship, or bathing in, or using the waters of any sacred tank, well, ghat, spring, river or lake.

Section 4 of the Act– Whoever on the ground of “untouchability” enforces against any person social disabilities with regard to the following facilities, situations and conditions shall be punishable. .

- i) accession to any shop, public restaurant, hotel or place of public entertainment.
- ii) use of any utensils and other articles for the use of the general public.
- iii) practice of any profession or the carrying on of any occupation, trade or business.
- iv) use of, or access to, any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, burial or cremation ground, any sanitary convenience, or any road.
- v) use of, or access to, any place used for charitable or a public purpose maintained wholly or partly out of State funds or dedicated to the use of general public.
- vi) enjoyment of any benefit under a charitable trust created for the benefit of the general public.
- vii) use of or accession to any public conveyance.
- viii) construction, acquisition, or occupation of any residential premises in any locality, whatsoever.
- ix) use of any dharmshala, sarai or musafirkhana which is open to the general public.
- x) observance of any social or religious custom, usage or ceremony.
- xi) use of jewellery and finery.

Section 5 : (a) if anybody refuses a person admission on the ground of ‘untouchability’ to any hospital, dispensary, educational institution or any hostel which are established or maintained for the benefit of the general public or (b) discriminates against any such person after admission shall be punishable.

Section 6: Refuses on the ground of ‘untouchability’ to sell any goods or to render any service to any person on the same terms and conditions at which such goods are sold or services are rendered to other persons in the ordinary course of business.

Section 7 (1): the other discriminatory offences which shall be punishable under the act are the following.

- a) Prevention of any person from exercising any right accruing to him by reason of the abolition of ‘untouchability’ under Article 17 of the Constitution.
- b) Molests, injures, annoys, obstructs or attempts to cause obstruction or boycotts any person in the exercise of any such right or any person by reason of his/her having exercised any such rights.
- c) Incites or encourages any person or class of persons or the public to practise any form of “untouchability”.
- d) Insults or attempts to insult a member of a Scheduled Castes on the ground of “untouchability”.

Each of the above sections are further specified and the punishments of offences are mentioned in the remaining sections. Punishments are very mild and therefore the Act of 1989 again looked into them.

Procedure

Person affected by the practice of untouchability may approach the Police Station covering the area of such incident and register FIR (First Information Report) as per provision under the Sections 3 to 7 of the Protection of Civil Rights Act, 1955 .

3.4.2. Provisions of the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989

The Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 was enacted by the Government of India to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes. It made the provision for establishing Special Courts for the trial of such offences. It provides norms for relief and rehabilitation. The Act extends to whole of India except Jammu & Kashmir. The Act is implemented by the respective State Governments and Union Territory Administrations, which are supported by the Centrally Sponsored Scheme for effective implementation of the provisions of the Act.

The 1955 Protection of Civil Rights Act named violations against dalits and adivasis as 'crimes'. The Act of 1989 went a step further affirming that such crimes are 'atrocities' and are intolerable in a democratic society. The term "atrocities" in the SC/ST Prevention of Atrocities Act of 1989 denotes a form of violence that society strongly condemns as inhuman and unacceptable. Thus the nomenclature *Protection of Civil Rights* was found inadequate. It directed the states to act on the issue of dalit and adivasi rights. The term 'atrocities' is further specified in terms of particular kinds of "crimes" which are considered serious under law. Some of these crimes are violent crimes such as murder, rape, abduction, arson and robbery and they are covered under the Indian Penal Code and the Indian Criminal Procedure Code.

The designers of act studied the offences that were recurring against the members of scheduled castes and scheduled tribes by the members of other castes. They found the atrocities were mostly of discriminatory type. An offence against a member of Scheduled Caste or Scheduled Tribe intended to degrade his/her dignity by a person belonging to other castes shall be punishable.

In case a person, not being a member of a Scheduled Caste or a Scheduled Tribe, forces a member of SC/ST to drink or eat any inedible or obnoxious substance;

to cause injury, insult or annoyance by dumping excreta, waste matter, carcasses or any other obnoxious substance in his premises or neighbourhood;

forcibly removes clothes from the person of a member of a SC/ST or parades him/her naked or with painted face or body or commits any similar act which is derogatory to human dignity;

wrongfully occupies or cultivates any land owned by, or allotted to, or notified by any competent authority to be allotted to him transferred;

Wrongfully dispossesses a member of a SC/ST from her/his land or premises or obstructs the enjoyment of the rights over any land, premises or water;

Compels or entices a member of a SC/ST to do forced or bonded labour;

forces or intimidates not to vote or to vote a particular candidate or to vote in a manner other than that provided by law;

institutes false, malicious or vexatious suit or criminal or other legal proceedings;

gives any false or frivolous information to any public servant and thereby causes such public servant to use his lawful power to the injury or annoyance of a member of a Scheduled Caste or a Scheduled Tribe;

intentionally insults or intimidates with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view;

assaults or uses force to any woman with intent to dishonour or outrage her modesty;

being in a position to dominate the will of a woman and uses that position to exploit her sexually to which she would not have otherwise agreed;

corrupts or fouls the water of any spring, reservoir or any other source ordinarily used by members of the Scheduled Castes or a Scheduled Tribes;

denies any customary right of passage to place of public resort or obstructs such member so as to prevent him from using or having access to a place of public resort to which other members of public or any section thereof have a right to use or access to;

forces or causes to leave his house, village or other place of residence.

Such offences are punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.

The Act further specifies other malicious and intentional atrocities that may usually happen in the society. Such deliberate attempts to harm SC and ST members by the members of other communities are tackled with severe punishment.

Whoever gives or fabricates false evidence against a member of SC/ST intending to be convicted of an offence which is capital by the law shall be punished with imprisonment for life and with fine.

If an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death.

Whoever gives or fabricates false evidence intending thereby to cause any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is punishable with imprisonment for a term of seven years or upwards, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years or upwards and with fine.

Whoever commits mischief by fire or any explosive substance intending to cause damage to any property belonging to a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and with fine.

Whoever commits mischief by fire or any explosive substance intending to cause destruction of a place of worship or a place for human dwelling or a place for custody of the property owned or used by a member of a Scheduled Caste or a Scheduled Tribe, shall be punishable with imprisonment for life and with fine.

Whoever commits any offence under the Indian Penal Code against a person of Scheduled Caste or a Scheduled Tribe shall be punishable with imprisonment for life and with fine. The same offence against a non dalit receives only a lesser punishment.

Procedure

The affected person may file FIR (First Information Report) in the Police Station of the area as per provision under Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Powers and Functions of the State Government

For the purpose of providing for speedy trial, the State Government shall, with the concurrence of the Chief Justice of the High Court, specify for each district a Court of Session to be a Special Court to try the offences under this Act.

For every Special Court, the State Government shall specify a Public Prosecutor or appoint an advocate as a Special Public Prosecutor.

The state government is empowered to impose and realise collective fine from the offenders.

Responsible judicial or police authorities can declare a disturbed area to be an area prone to atrocities and take necessary action for keeping the peace and maintenance of public order and may take preventive action.

The State Government should take such measures as may be necessary for the effective implementation of this Act as:

the provision for adequate facilities, including legal aid to the persons subjected to atrocities to enable them to avail themselves of justice.

the provision for travelling and maintenance expenses to witnesses, including the victims of atrocities, during investigation and trial.

the provision for the economic and social rehabilitation of the victims of the atrocities.

the appointment of officers for initiating or exercising supervision over prosecutions.

the identification of the areas to atrocities and adoption of such measures so as to ensure safety for such members.

The Scheduled Castes and Tribes (Prevention of Atrocities) Rules, 1995

In the exercise of powers conferred by the Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989, the Central Government made a few rules and regulations for the effective function of the Act. The uniqueness of the 1995 Rules is that they very firmly direct State Governments to take necessary precautionary and preventive measures to prevent any possible violence against the members of SC/ST.

Rules suggest due importance to the protective measures like identification of the areas prone to atrocities and direct verification of places by higher officials. There should be control over licensed and illegal weapons in such places. The rules permit the authorities in the volatile areas, if needs, to equip the members of the SC and ST with arms.

The rules of 1995 encourage public participation for creating harmony. NGO’s are encouraged to conduct awareness programmes.

It directs the State to constitute high power committees at different level to assist the government in implementation of the provisions of the Act. Similarly, vigilance and monitoring committees can be set up to suggest effective means to implement the provisions of the Act. Periodical reviewing of functions and situation is insisted.

3.5 ANNUAL REPORT -2004

The Ministry of Social Justice and Empowerment, Government of India, prepares annual reports on the functioning and progress of implementation of 1955 Act and 1989 Act. As a model, 2004 report on the Act of 1989 is given below. This is chosen, though recent reports have come, because this presents data of two years in comparison.

Annual Report on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, for the Year 2004 has compiled the number of cases registered by the State Governments and Union Territory Administrations. A total of 23,629 cases were registered in 2004 and 22,603 in 2003. It appears that total number of offence of atrocities registered under the Act have slightly been increased during 2004 as compared to 2003.

Cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (state wise)

S. No.	State/Union Territory	Number of Cases reported during the year	
		2004	2003
1	2	3	4
1.	Rajasthan	5391	5241
2.	Madhya Pradesh	4135	5087
3.	Uttar Pradesh	2863	1778
4.	Andhra Pradesh	2236	2328
5.	Bihar	1785	1185
6.	Orissa	1407	1222
7.	Karnataka	1232	1293

8.	Gujarat	1070	1025
9.	Maharashtra	922	870
10.	Tamil Nadu	891	974
11.	Chhatisgarh	769	815
12.	Kerala	374	335
13.	Jharkhand	232	168
14.	Uttaranchal	133	120

Only the top 14 states which figure above 100 cases are given here. The annual report contains all the states and union territories except Jammu& Kashmir. From the data the following implications can be derived. Large number of cases indicates the presence of atrocities even after the implementation of acts and rules for the protection of Dalits. It should be taken as a good sign as well, because the number shows the increasing intervention of police and judiciary in favour of the down trodden. Above all, it also indicates the strength of Dalit and other social organizations and activists in raising the problems of the weak. But the data given in the following tables from the 2004 annual report are not so encouraging.

Investigation of Cases by Police 2004

A total of number of 32,324cases was brought forwarded in 2004. After investigation 15,646 cases were charge sheeted.

Number of Cases

S.No.	Item	Number	Percentage of total
1	Total Number of cases (including brought forward)	32,324	-
2	Number of cases charge sheeted in courts	15,646	48.40%
3	Number of cases closed after investigation	6,912	21.38%
4	Number of cases pending with the police at the end of the year	9,766	30.22%

From the above, it appears that more than 48.40% of the cases were charge sheeted during the year and 21.38% cases were closed after investigation.

Disposal of Cases by Courts

Number of Cases

S.No.	Item	Number	Percentage of Total
1	Total Number of cases (including brought forward)	1,41,881	-
2	Number of cases disposed of by Courts	20,750	14.62%
	a Number of cases ending in conviction	3,259	15.71%
	b Number of cases ending in acquittal	17,491	84.29%
3	Number of cases pending with Courts	1,21,131	85.38%

The disposal of cases by the courts makes us to think about the reluctant role of the courts in promoting a just society. As the table concerned the disposal of cases shows that trial was taken place only in 14.62 per cent of the cases. Out of them, above 84 per cent did not favour the victims. It confirms such claims as the charge sheets were not well framed or the prosecutors were not properly representing the clients. In some cases the witnesses might have changed their sides. It is also observed that the victims many times make out of court settlement and allow the offender to escape from punishment.

3.6 NATIONAL COMMISSION FOR SCHEDULED CASTES AND SCHEDULED TRIBES

The commissioner for the Scheduled Castes and Scheduled Tribes had been functioning as a constitutional authority under Article 338 since 1950. The Government of India, keeping in view of the magnitude of the problems of Scheduled Castes and Scheduled Tribes, decided to set up a broad based multi-member body as a constitutional authority in place of a single person to make it more representative and strong. Accordingly a bill was passed by the parliament after the amendment of Article 338 of the Constitution of India by the Constitution (Sixty-fifth Amendment) Act, 1990. The National Commission for Scheduled Castes and Scheduled Tribes came into existence as a Constitutional body on March 12, 1992.

The following are the duties of the Commission:-

- a) It has to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled and to evaluate the working of such safeguards.
- b) The commission has to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes and Scheduled Tribes.
- c) It should participate and advise on the planning process of socio-economic development of the Scheduled Castes and Scheduled Tribes and to evaluate the progress of their development under the Union and State governments.
- d) It has to present (annual) reports upon the working of those safeguards to the President.
- e) It can make in such reports recommendations as to the measures that should be taken by the Union or any State for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of the Scheduled Castes and Scheduled Tribes.
- f) It has to discharge such other functions in relation to the protection, welfare and development and advancement of the Scheduled Castes and Scheduled Tribes as the President may specify.

The Commission shall, while investigating any matter relating to the safeguards or specific complaints with respect to the deprivation of rights and safeguards have all the powers of a civil court trying a suit and in particular in respect of the following matters, namely:-

- a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;
- b) requiring the discovery and production of any document;
- c) receiving evidence on affidavits;
- d) requisitioning any public record or copy thereof from any court or office;
- e) issuing commissions for the examination of witnesses and documents;
- f) any other matter which the President may, by rule, determine.

The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes and Scheduled Tribes.

Apart from the National Commission for Scheduled Castes and Scheduled Tribes, National Human Rights Commission and other institutions are in place to implement and monitor the Constitutional guarantees. Parliament and State legislatures not only review annual records but also constantly take up issues of violation of rights. Judiciary plays a key role in enforcing the laws and regulations.

Check Your Progress II

Note: a) Use the space provided for your answer.
b) Check your answer with those provided at the end of the unit.

1) Write a note on the provisions of the law against ‘untouchability.’

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3.7 LET US SUM UP

The goal of social structures is to construct a harmonious society. But violence has been institutionalised through social and cultural practices of caste system over the years. The legal measures are not that effective to counter the vices in the name of caste. The deep rooted and violent socio cultural and economic traditions of India are continued to exist even under the liberal economic and political conditions. Cultural conditioning stays behind and its influence is stronger than rational and humanist views.

The purpose of the Acts and the Commissions is to prevent atrocities and help in social inclusion of Dalits. Though the efforts have not been fully successful, they vibrated the movements working for the liberation of Dalits into the main stream.

It is not the severity of punishment that we need but certainty of punishment. Large number of offenders is not convicted not because of the absence of law or loopholes in law but because of the slackness in implementing the spirit of the

law. It shows that the problem lies in the implementation process. It is in the hands of police, judiciary and bureaucracy. The functions of these important authorities are to be made simple, transparent and accountable.

Constitutional safeguards and legal remedies are the most effective means that are available to correct the ills of social structures. Civil liberty groups and social movements including Dalit groups have to collectively intervene in the processes of implementation. In the recent years, the media have emerged as the watchdog for human rights. Social organizations and the media have to monitor the functioning of the Governmental machinery in protecting Dalits by preventing atrocities against them.

3.8 KEY WORDS

Structural Violence : An institutionalised attempt to prevent any individuals or communities from the accession of available facilities and services by the dominant individuals or powerful communities through legal or illegal means and with open or hidden strategies can be called structural violence.

3.9 FURTHER READINGS AND REFERENCES

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1.10 ANSWERS TO CHECK YOUR PROGRESS

Answers to Check Your Progress I

- 1) Violence against Dalits can be considered as structural because of the following reasons. Individuals practice violence not as a result of personal enmity or individual displeasure but as a result of the socio cultural learning that are imbibed by the members of upper castes. Therefore violence is not due to inherent evils of any individual or caste but because of the inherent evils of caste system itself. In other words, caste system has got immoral

forms of social, political, cultural and economic structures that permit or encourage violence to go unchecked.

Violent social spheres are systematically institutionalised. Society was divided on the basis of work. Social division was stabilised through inheritance and social obligation was demanded from people as ethical norms as sanctioned by religious scriptures. In such a social system, the social labour of the members of the upper castes was rewarded well and donation to them was accepted as a virtuous act, but members of the lower caste were not paid what were due to them.

There was no mechanism within the system that could rectify systemic problems. On the contrary there were very effective means to prevent any possible change. The members of the upper castes regard any change, however good they may be, as threat to social order, therefore should not be permitted. The attempt to change the oppressive practices by the sufferers leads to tension and conflict.

- 2) The rising democratic consciousness among dalits, the trend of self-assertion through politics, literature and social movements invited the wrath of the upper castes against them. The empowering attempt causes severe clashes between upper castes and the Dalits mainly in the rural areas. It is noticed that the intensity of violence against the Dalits has been increasing. One reason is the political tension. It is supplemented by increasing awareness among Dalits about their rights and their assertion to achieve them.

Answer to Check Your Progress II

- 1) The Protection of Civil Rights Act, 1955 prescribes punishment for the preaching and practice of “Untouchability” and for the enforcement of any disability arising there from for matters connected therewith. In the Act “civil rights” means any right accruing to a person by reason of the abolition of “untouchability” by article 17 of the Constitution. A number of important sections are given below.

Section 3 of the Act of 1955 identifies the practices of untouchability on the ground of preventing members of the out castes

- a) from entering any place of public worship, which is open to other persons professing the same religion , or
- b) from worshipping or offering prayers or performing any religious services in any place of public worship, or bathing in, or using the waters of any sacred tank, well, ghat, spring, river or lake.

Section 4 of the Act– Whoever on the ground of “untouchability” enforces against any person social disabilities with regard to the following facilities, situations and conditions shall be punishable. .

- i) accession to any shop, public restaurant, hotel or place of public entertainment.
- ii) use of any utensils and other articles for the use of the general public.
- iii) practice of any profession or the carrying on of any occupation, trade or business.

- iv) use of, or access to, any river, stream, spring, well, tank, cistern, water-tap or other watering place, or any bathing ghat, burial or cremation ground, any sanitary convenience, or any road.
- v) use of, or access to, any place used for charitable or a public purpose maintained wholly or partly out of State funds or dedicated to the use of general public.
- vi) enjoyment of any benefit under a charitable trust created for the benefit of the general public.
- vii) use of or accession to any public conveyance.
- viii) construction, acquisition, or occupation of any residential premises in any locality, whatsoever.
- ix) use of any dharmshala, sarai or musafirkhana which is open to the general public.
- x) observance of any social or religious custom, usage or ceremony.
- xi) use of jewellery and finery.

Section 5 : (a) if anybody refuses a person admission on the ground of ‘untouchability’ to any hospital, dispensary, educational institution or any hostel which are established or maintained for the benefit of the general public or (b) discriminates against any such person after admission shall be punishable.

Section 6: Refuses on the ground of ‘untouchability’ to sell any goods or to render any service to any person on the same terms and conditions at which such goods are sold or services are rendered to other persons in the ordinary course of business.

Section 7 (1): the other discriminatory offences which shall be punishable under the act are the following.

- a) Prevention of any person from exercising any right accruing to him by reason of the abolition of ‘untouchability’ under Article 17 of the Constitution.
- b) Molests, injures, annoys, obstructs or attempts to cause obstruction or boycotts any person in the exercise of any such right or any person by reason of his/her having exercised any such rights.
- c) Incites or encourages any person or class of persons or the public to practise any form “untouchability”.
- d) Insults or attempts to insult a member of a Scheduled Castes on the ground of “untouchability”.

Each of the above sections are further specified and the punishments of offences are mentioned in the remaining sections. Punishments are very mild and therefore the Act of 1989 again looked into them.