

# Compilation on Law

## FUNDAMENTAL RIGHTS

### RIGHT TO EQUALITY

#### ARTICLES

14 Equality before law

15 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

16 Equality of opportunity in matters of public employment

17 Abolition of Untouchability

18 Abolition of titles

### RIGHTS OF FREEDOM

19 Protection of certain rights regarding freedom of speech, etc.

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21 Protection of life and personal liberty

22 Protection against arrest and detention in certain cases

### RIGHTS AGAINST EXPLOITATION

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### RIGHT TO FREEDOM OF RELIGION

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### CULTURAL AND EDUCATIONAL RIGHTS

29 Protection of interests of minorities

30 Rights of minorities to establish and administer educational institutions

### **13 LAWS INCONSISTENT WITH OR IN DEROGATION OF THE FUNDAMENTAL RIGHTS**

(1) All laws in force in the territory of India immediately before the commencement of this Constitution, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.

(2) The State shall not make any law made in contravention of this clause shall, to the extent of the contravention, be void.

(3) In this article, unless the context otherwise requires, -

(a) "law" includes any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law;

(b) "laws in force" includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law ( many part thereof may not be then in operation either at all or in particular areas.

### **DIRECTIVE PRINCIPLES OF STATE POLICY**

39A Equal justice and free legal aid.

40 Organisation of village panchayats.

41 Right to work, to education and to public assistance in certain cases.

42 Provision for just and humane conditions of work and maternity relief.

43 Living wage, etc., for workers

43A Participation of workers in management of industries.

44 Uniform civil code for the citizens.

45 Provision for free and compulsory education for children.

46 Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections.

47 Duty of the State to raise the level of nutrition and the standard of living to improve public health.

48 Organisation of agriculture and animal husbandry.

48A Protection of monuments and places and objects of national importance.

50 Separation of judiciary from executive.

51 Promotion of international peace and security.

**LIST OF SOME OFFENCES (CRIMINAL) COMMITTED AGAINST WOMEN**

<b>OFFENCES</b>	<b>SECS &amp; PROVISION OF LAW</b>	<b>COG/NON-COG</b>	<b>MAXIMUM PUNISHMENT</b>
<b>MISCARRIAGE</b>			
Causing Miscarriage	312 IPC	Non cog	3 to 7 yrs
Causing Miscarriage without consent	313 IPC	Cog.	Life or 10 yrs
Death caused while causing miscarriage without Woman's Consent	314 IPC	Cog.	10 yrs or Life
Act done to prevent child being born alive or to cause it to be after birth	315 IPC	Cog	10 yrs.
<b>KIDNAPPING</b>			
Kidnapping	363 IPC	Cog.	7 yrs.
Kidnapping women to compel marriage, seduced to illicit inter course, etc.	366 IPC	Cog.	10 yrs.
Procuration of minor girl under 18 years	366-A IPC	Cog.	10 yrs.
Importation of girl	366-B IPC	Cog.	10 yrs.
<b>SEXUAL ASSAULT</b>			
Punishment for Rape	376 IPC	Cog	7 to 10 yrs. or Life time
Intercourse by a man with him during Separation	376-A IPC	Cog	2 yrs. & Fine
Intercourse by public servant with woman	376-B IPC	Cog	5 yrs. & Fine

in his custody

Intercourse by Superintendent of jail, remand home, etc.	376-C IPC	Cog	5 yrs. & Fine
Intercourse by any member of the management or staff of a hospital with any woman in that hospital	376-D IPC	Cog	5 yrs. & Fine
Unnatural Offences-carnal intercourse	377 IPC	Cog	Life or 10 yrs.

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### MARRIAGE

Cohabitation caused by deceitfully inducing her under belief of lawful marriage	493 IPC	Non-Cog	10 yrs.
Marrying again during life time of wife (away for 7 yrs.)	494 IPC	Cog	7 yrs.
Going through unlawful marriage ceremony	496 IPC	Cog	7 yrs.
Enticing, detaining a during women with criminal intention	498 IPC	Cog	2 yrs.

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### CRUELTY

Abetment of suicide	306 IPC	Cog	10 yrs. & Fine
Cruelty by Husband or Relatives-Mental or physical	498 A IPC	Cog	3 yrs.
Uses indecent language or behaves in a disorderly manner in a public street or public place	92 -(o)- K.P.Act	Cognizable if committed in the Presence of police	Fine of Rs.100
(KP Act—Karnataka Police Act)			
Uses in any street abusive	92 -(r)-K.P.Act	-do-	-do-

or insulting words or affixes  
or exhibits any indecent,  
threatening abusive or insulting  
paper or drawing with intent to  
provoke

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**MODESTY**

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Outraging modesty, use of criminal force with intention to outrage her modesty	354 IPC	Cog	2 yrs.
Outraging modesty by Uttering gesture, sound	509 IPC	Cog	1 yrs.

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**DOWRY HARASMENT**

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<b>Dowry Death:-</b> (Death of a woman is caused by otherwise than normal circumstances within 7 years of her marriage and it is shown that soon before he death she was subjected to cruelty or harassment by her husband or relative for, or in connection with, any demand for dowry)	304-B-IPC	Cog	7 yrs. to Life
Penalty for giving or taking Dowry	3 Dry.Pro.Act. (D.P.Act)	Cog	5 yrs. & Fine
Penalty for demanding Dowry	4 Dry.Pro.Act. (D.P.Act)	Cog	6 months to 2 yrs. & Fine

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**IMMORAL TRAFFIC**

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Punishment for living on the earnings of prostitution	4 Immoral Traffic (Prevention) Act	Cog	2 yrs. or Fine or Both
Procuring inducing or taking woman or girl for the sake of prostitution	5 Immoral Traffic (Prevent) Action	Cog	3 to 7 yrs. & Fine
Detaining a woman or girl in premises where prostitution is carried on.	6 Immoral Traffic (Prevent) Action	Cog	7 to 10 yrs. & Fine

Seduction of a woman or girl in custody	4 Immoral Traffic (Prevent) Action	Cog	7 yrs. or Life & Fines
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**MINORITY RIGHTS  
INDIAN CONSTITUTION**

**What sections of the law should a person or persons from the minority community do when they do not receive protection from the law enforcement machinery during a riot or at any other time?**

**What sections of the law should a person of the minority invoke when they are discriminated against in matters of employment, access to resources, a fair share in development ?**

Invoke the

**RIGHT TO EQUALITY (INDIAN CONSTITUTION)**

14 Equality before law

The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Invoke the

**RIGHT TO EQUALITY (NON-DISCRIMINATION)**

15 Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth. Under Article 15 of the Indian Constitution:

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or nay of them.

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or nay of them, be subject to any disability, liability, restriction or condition with regard to -

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the State from making any special provision for women and children.

9(4) Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

A person from the minority community may also invoke these articles

16 Equality of opportunity in matters of public employment

17 Abolition of Untouchability

18 Abolition of titles

**RIGHTS OF FREEDOM**

19 Protection of certain rights regarding freedom of speech, etc.

20 Protection inn respect of conviction for offences

21 Protection of life and personal liberty

22 Protection against arrest and detention in certain cases

**What must an individual or persons or groups belonging to the minority do when their essential freedom, the right to faith, belief and worship and attendant cultural rights are threatened or actually denied?**

They must invoke

**RIGHT TO FREEDOM OF RELIGION**

25. Freedom of conscience and free profession, practice and propagation of religion

(1) Subject to public order, morality and health and to the other provisions of this part. All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law:-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation I:- The wearing and carrying of kirpans shall be deemed to be included in the profession of the Sikh religion.

Explanation II:- In sub-clause (b) of clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jaina or Buddhist religion, and the reference to Hindu religious institutions shall be constructed accordingly.

26. Freedom to manage religious affairs.

Subject to public order, morality and health, every religious denomination or any section thereof shall have the right :-

(a) to establish and maintain institutions for religious and charitable purposes;

(b) to manage its own affairs in matters of religion;

(c) to own and acquire movable and immovable property; and

(d) to administer such property in accordance with law.

27. Freedom as to payment of taxes for promotion of any particular religion

No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

28. Freedom as to attendance at religious instruction or religious worship in certain educational institutions

(1) No religious instruction shall be provided in any educational institution wholly maintained out of State funds.

(2) Nothing in clause (1) shall apply to an educational institution which is administered by the State but has been established under any endowment or trust which requires that religious instruction shall be imparted in such institution.

(3) No person attending any educational institution recognised by the State or receiving aid out of State funds shall be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution or in any premises attached thereto unless such person or, if such person is a minor, his guardian has given his consent thereto.

**CULTURAL AND EDUCATIONAL RIGHTS**

29. Protection of interests of minorities.

- (1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.
  - (2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.
30. Right of minorities to establish and administer educational institutions.
- (1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
  - (2) The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

**The last few years have seen sustained attacks on the religious minorities including especially their places of worship. The demolition of the Babri Masjid in full public view on December 6, 1992 has been followed by scattered attacks on churches all over the country.**

**What sections of the Indian Criminal Law relate to these crimes?**

**Chapter XV of the Indian Penal Code is titled ‘Offences Related to Religion’.**

**Under this chapter**

Sections 295 details an offence: ‘Destroying, Damaging or defiling a place of Worship or a sacred object with intent to Insult the religion of any class of persons. Besides, Section 295A deals with the offence of “ Maliciously Insulting the religion or the Religious beliefs of any class’ and can be invoked when these offences take place. The state through the police is legally and morally *bound* to register these offences but in most cases this just *does not happen* or if at all the preliminary FIRs are filed, no follow-up investigations take place, neither are prosecutions launched.

**Hate speech and hate writing are two mechanisms that have been systematically used in recent times, during and after elections, to whip up anti-minority hatreds and in many cases, actual violence.**

**What should the police do, and human rights group insist that they do, when repeated misuse of hate speech polarizes communities and often actually, degenerates into outright violence?**

Invoke the relevant sections of the Indian Penal Code and the Representation of People’s Act that are **meant to deal with these offences but are rarely used.**

There are roughly four sections in Indian criminal law and election law that clearly and unequivocally *restrict* or *restrain* the use of such hate speech and writing and empower the executive, that is government (state and central) and the police, as also the judiciary with the task of enforcing them. Sections 153 a and b of the Indian Penal Code (IPC—offences for promoting enmity between different groups on grounds of religion, race, place of birth, language etc and doing acts prejudicial to maintenance of harmony or prejudicial to national integration) and sections 123 a and b of the Representation of People’s Act (RPA—that, under the definition of a ‘corrupt practice’ forbids the use of undue influence, appeal on grounds of religion, promoting enmity or hatred between

different classes of citizens on the ground of religion, race or community and character assassination).

Quite apart from the fundamental rights to equality, equal protection by the law, right to life, freedom of expression, association and residence and freedom to promote, practice and propagate one's faith and the rights of religious minorities to run their own institutions, the consistent and honest application of these sections of the IPC and the RPA are critical to ensure and assert the protection of basic democratic and human rights and especially, the Constitutional rights of Indian religious minorities. As importantly, the regular application of these sections in the public arena, by actions of the executive and judiciary, whenever violations of these laws takes place is as much necessary for upholding the secular intent of the Constitution of India.

## DALIT RIGHTS

Article 17 of our Constitution has abolished untouchability and forbidden its practice in any form. To enforce this solemn commitment the Government of India passed the Untouchability (Offences) Act 1955. It was amended in 1976 and is now known as "Protection of Civil Rights Act, 1955." But unfortunately the practice of untouchability continues unabated in every corner of the country and in every walk of life. Some practise it openly and defiantly while others use subtle ways. The blatant violations of the existing laws is shocking enough but what is more distressing is the failure of the law enforcing machinery to punish the guilty.

## CONSTITUTIONAL PROVISIONS

### **1. Which are the fundamental rights pertaining to the abolition of untouchability?**

- i) Article 15(1) prohibits "the state" from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. This right under Article 15(1) is available to the citizens against the State only.
- ii) Article 15(2) prohibits any restriction, disability or liability with regard to, (a) access to shops, public restaurant, hotels and places of public entertainment; or (b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of general public, on grounds only of religion, race, caste, etc. This right under Article 15(2) is available to the citizens against any person. However, a private well or tank does not come within the meaning of this clause.
- iii) Similarly Article 16(1) promotes equality of opportunity for all citizens in matters relating to public employment or appointment to any office under the State and Article 16(2) prohibits any discrimination on grounds only of religion, race, caste, etc. in respect of employment or office under the State.
- iv) Article 17 of the Constitution states, "untouchability is abolished and its practice in any any form is forbidden. The enforcement of any disability arising out of "untouchability" shall be an offence punishable in accordance with law."
- v) Article 23(1) prohibits traffic in human beings and forced labour and thus aims at "recognition and restoration of the dignity of man."
- vi) Article 25(1) guarantees the rights to religion to all persons which includes the

right “to freedom of conscience and right freely to profess, practise and propagate religion.” But on the ground of religious freedom, no individual can lawfully defend “untouchability.”

Article 25(2) removes the general obstacles which otherwise would have been so in providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. A Scheduled Caste Hindu has the right to worship in any temple in the same manner and to the same extent as any other non-Scheduled Caste Hindu.\*

- vii) Article 29(2) states that, “No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.”
- viii) Under Article 32, any citizen whose fundamental rights including the right against Untouchability under Article 17 are violated can move the Supreme Court directly by writ proceedings for the enforcement of the rights conferred by the Constitution. Public spirited individuals, lawyers, social workers, journalists and voluntary organizations can on behalf of the Scheduled Castes file Public Interest Litigation petitions in the Supreme Court under Article 32 or in the High Courts under Article 226 of the Constitution.

#### **UNDER WHICH STATUTE CAN THE PRACTICE OF UNTOUCHABILITY BE PUNISHED?**

The relevant Act is the “Protection of Civil Rights Act, 1955”, formerly called the Untouchability (Offences) Act, 1955.

#### **WHAT ARE THE PUNISHMENTS AWARDBLE FOR AN OFFENCE COMMITTED UNDER THE ACT?**

- a) The imposition of religious disabilities on a Scheduled Caste person is a crime punishable with fine which shall not be less than one hundred rupees and not more than 500 rupees or imprisonment for a term not less than one month and not more than six months.
- b) The punishment for imposing social disabilities is the same as that provided for enforcing religious disabilities.
- c) Any person on the ground of untouchability refuses to sell any goods or render any service to any person on the same terms and conditions as available to other persons in the ordinary course of business, are also punishable in accordance with the provisions of this Act as enumerated above.

#### **CAN AN OFFENCE AGAINST UNTOUCHABILITY BE TRIED SUMMARILY?**

Every offence under the Act is a cognizable offence (i.e. a police officer can arrest the accused person without warrant). Every offence, except where it is punishable with imprisonment for a minimum term exceeding three months, may be tried summarily by a first class Judicial Magistrate. (For summary trials procedure is simple and so the case can be disposed of expeditiously.)

#### **ON WHOM IS PLACED THE “BURDEN OF PROOF” IN UNTOUCHABILITY OFFENCE CASES?**

In criminal cases normally the accused is believed to be innocent until proved guilty, and the burden of proving the guilt is on the prosecution. However, in “untouchability” offence cases, the burden of proof of innocence lies on the accused. In other words, when

the victim is a member of a Scheduled Caste, the commission of a forbidden act under PCR shall be *prima facie* presumed to have been committed on the ground of “untouchability.”

**WHAT IS THE DUTY OF THE STATE GOVERNMENT TO ENSURE THE ENFORCEMENT OF THE ACT?**

- i) The State Government must take measures to make the rights available to the persons subject to any disability.
- ii) Such measures must include:
  - Provision of adequate facilities including free Legal Aid to avail oneself of such rights.
  - Setting up of special courts.
  - Appointment of special officers for initiating or exercising supervision over prosecution.
  - Setting up Committees to assist the State Government in formulating or implementing such measures.
  - Provision for periodic survey of the working of Act.
  - Identifying “untouchability prone areas” and adopting relevant measures to eradicate such practices.

**WHAT SHOULD A SCHEDULED CASTE PERSON DO WHEN AN OFFENCE UNDER THIS ACT IS COMMITTED AGAINST HIM?**

As in other criminal cases immediately report the matter to the nearest police station giving the following information:

- \* The name and address of the alleged offender.
- \* The nature (particulars) of the offence or the act committed.
- \* The name and address of any witness.
- \* The time, date and place of the offence.

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