

Sabrang Factsheet INDIAN LAW

RIGHTS OF DALITS

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 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 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 simply 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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First Report Prepared by Teesta Setalvad for Sabrang Communications & Publishing Private Limited