

INDIA'S CONSTITUTIONAL PERSUASIONS FOR SOCIAL EXCLUSION OF UNTOUCHABILITY

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Abstract: *The notion that untouchability only applies to situations of social exclusion based on arbitrary ideas of superiority and inferiority, and as a result, Article 17 of the Indian Constitution must take this into account. Four varnas, which eventually evolved into a quadruple caste system, comprised Indian society's stratification. Referred to as panchamas or outcasts, certain individuals were excluded and kept outside the caste system. These individuals handled the so-called "menial" tasks, such as disposing of waste and cleaning sewerage. They prohibited access to public education, economic possibilities in both the public and private sectors, the ability to worship in communal temples, and the sharing of communal resources like rivers and forests. They were forced to reside outside of the village or town limits because the other castes in the social hierarchy viewed them as "untouchables" and they could not live there. Due to the centuries-long prejudice and marginalization they experienced, these individuals had little to no access to education—the one tool that could truly level the playing field.*

The Constitution does not define untouchability. Therefore, it must only be understood literally. According to Article 17 of the Constitution, untouchability is outlawed and prohibited in all forms. Enforcing any impairment resulting from Ambedkar's thought that helping the downtrodden classes was his life's work. He persuaded me that "untouchability" would be considered a crime with legal repercussions. The practice of untouchability has persisted for the longest in India. People are divided into classes as part of the untouchability practice, and some members of the "upper classes" avoid social interaction with members of the "lower classes." The ideal example of untouchability practice is documented evidence of labor division among social strata. The history of the "untouchability" practice is well documented; the caste system and the practice's racial exclusivity among the Indo-Aryans were major factors in their origins. According to Ambedkar, the untouchables' situation cannot be better unless they struggle against their circumstances. He would publicly chastise them, make sure that the excluded groups were fully included, and refuse to condone discrimination on whatever grounds to restore their dignity.

Key Words: *Exclusion, Supremacy, Arbitrary, Discrimination, Hierarchy, Enforcement, Amelioration, Untouchability, Remonstrance, Inclusion.*

“Political Democracy cannot last unless there lies at the base of it, Social Democracy. What does social democracy mean? It means a way of life which recognizes liberty, equality, and fraternity as the principles of life.”

Dr. B.R. Ambedkar

1. INTRODUCTION:

Untouchability is still practiced by high castes and lower castes in India, despite being outlawed by the constitution. However, how was the subject of untouchability resolved in colonial India? Did opinions shift throughout the struggle for independence? And why is the practice still common in India today, even after it was outlawed?

To comprehend the deprivation and untouchability of low-caste groups that have experienced exclusion and unequal treatment across numerous domains, this article attempts to provide a brief study of the social exclusion paradigm.

One distinctive aspect of Hindu social life is the caste system in India. The caste system is a long-standing social framework that divides Indian society into hierarchical groupings. Since people who are deemed "untouchable" are positioned at the bottom of the social hierarchy, the practice of untouchability is strongly linked to the caste system. As "the rights and privileges of higher castes, become the disabilities of the lower castes, particularly the untouchables," according to Sukhadeo Thorat. In their paper "The Continuing Practice of Untouchability in India," Thorat and Joshi describe how most Indians, who identify as Muslims, are separated from one another based on "jati," or caste. India is the world's largest democracy. They frequently experience discrimination in the form of being refused entry to public places, educational facilities, and even necessities like water sources. Leaders of the Indian independence movement, such as Dr. B.R. Ambedkar and Mahatma Gandhi, saw the need to abolish untouchability and strove to do so.

2. What Untouchables Mean:

The term "untouchables" describes a social group in India that has traditionally been subject to prejudice and exclusion from the caste system. They were seen as unclean, and it was thought that higher caste members could become contaminated by them. The word Dalits, which means "oppressed" or "broken people," has taken the place of the disparaging term.

2.1 Knowing what untouchability is:

Caste prejudice is a psychological condition. It is a mental and behavioral illness. The underlying cause of this illness is the teachings of the Hindu religion. We adhere to untouchability and practice casteism because the Hindu religion commands us to. Something bitter cannot be turned pleasant. Anything's flavor can be altered. However, poison cannot turn into sweetness."

Indian society has been afflicted by the social practice of untouchability for millennia. It is a pervasive kind of caste-based discrimination in which members of particular groups are shunned socially, economically, and politically because they are deemed "untouchable." In addition to denying these people their fundamental human rights, the practice of untouchability upholds an oppressive and unequal social structure.

2.2 History of Untouchables in India:

The old caste system that separated Indian society into four main castes—Brahmins, or priests and academics; Kshatriyas, or warriors and rulers; Vaishyas, or merchants and traders; and Shudras, or manual laborers—is whence the untouchables in India got their start. The Dalits, commonly referred to as untouchables, were viewed as social outcasts and were seen as existing outside the caste system. Higher castes believed their touch to be contaminated, and they were forbidden from using public wells and temples. They were made to carry out menial tasks like handling dead animals and cleaning latrines. Their rights were frequently infringed, and they experienced violence and prejudice from upper castes.

The fundamental characteristics of social exclusion have been widely acknowledged in the literature on social science throughout history (Buvinic 2005). A social process known as social exclusion is the denial of fair and equal chances to specific social groupings in a variety of societal contexts. Three traits that characterise social exclusion are pertinent. Initially, social exclusion refers to the denial of equal opportunities across various domains. Second, social interactions are a part of social exclusion. Thirdly, human poverty and a lack of freedom.

Amartya Sen highlights the several aspects and interpretations of the term "social exclusion." Additionally, he was making a distinction between "passive and active exclusion." "Active exclusion," according to him, is the purposeful exclusion. The social process via which "passive exclusion" operates occurs when there are no conscious attempts to exclude.

Through its historical continuation and spillover effects, the caste system has governed the social, economic, and political lives of other religions as well as Hindu civilization. Insofar as caste-based exclusion serves as the foundation for numerous anti-discriminatory laws in India for other social groups like tribal, women's, and religious groups, it is especially important to comprehend and conceptualize the nature of exclusion centered around the caste system (Thorat and Joel 2004).

In India, institutions and cultural relationships that exclude, discriminate against, isolate, and deprive certain groups based on their group identity—such as caste, race, or religion—are the main sources of exclusion (Thorat and Louis 2003). Social scientists' theoretical formulations acknowledged that, at its core, caste is a system of social and

economic governance or organization that is regulated by certain, distinctive customs and norms (Akerlof 1976, Scoville 1991, Lal 1988, Ambedkar 1936).

Untouchability The untouchables, who are at the bottom of the caste hierarchy, suffered the most from unequal assignment and claim to rights, according to the social exclusion system of the ancient caste system. They are not allowed to own property, work, etc. Thus, the untouchables experienced social exclusion and discrimination involving the denial of certain rights, such as civil, cultural, religious, and economic rights, just like other lower castes. A caste's exclusion would also affect other areas including housing, healthcare, education, and other related social necessities. According to this theory, the caste system impedes personal growth by negating not only equality and freedom but also fundamental human rights, especially for the lower caste "untouchables." Because of their perceived pollution, untouchables were denied freedom, equal opportunities, and rights, leading to social marginalisation and isolation because of the concept of untouchability. Thus, the practice of untouchability, which is founded on exclusion and discrimination, inevitably results in the denial of access to and entitlements to civil, cultural, religious, and political rights in addition to economic rights. According to UNDP (2004), it has to do with "living mode exclusion."

The Emancipatory Constitutionalism of Dr. Ambedkar Additionally, the British dutifully upheld Hindu and Islamic enslavement from 1772 until 1843, when Act-V's enactment delegaledized it and the Indian Penal Code's adoption in 1860 ended it (Banaji 1937). Legislative changes that were selective were implemented in response to opposition to untouchability. In his speech on November 20, 1930, in front of the King and Prime Minister of England, at the First Round Table Conference held in London to frame the Indian (British) Constitution, Dr. Ambedkar made the following observation regarding the British government's haphazard efforts: "When we compare our depressed classes position, with the one which it was our lot to bear in Indian society of pre-Britishers time."

Dr. Ambedkar was instrumental in rallying the oppressed people to fight for their rights. Many members of the "lower caste" started to seek their rights because of him. Ambedkar and Shahu Maharaj collaborated to arrange a convention for the welfare of untouchables in Mangaon, Kolhapur, in March 1920. Untouchables were told by Shahu Maharaj, "You have found your savior in Ambedkar." I do not doubt that he will free you from your bonds. In 1927, Ambedkar spearheaded a campaign opposing untouchability. In this passage, he attacked Hindu holy books for promoting untouchability. He tried to make sure that the "untouchables" could access public wells for water and go inside places of worship. On December 25, 1927, he also organized a large-scale burning of copies of *Manusmriti*, a text that supports untouchability and caste-based prejudice. Aside from all of this, Ambedkar and Mahatma Gandhi formed the Poona Pact in 1932, which made it easier to reserve seats for the lower classes. He had guided over fifteen thousand Dalits inside the Kalaram Temple earlier in 1930 so they may experience seeing God for the first time.

Dr. Ambedkar continues, "The British Government refrained from intervening because it fears that its attempts to change the current social and economic code would be met with opposition" (Busi 2016). "Dr. Ambedkar advanced a transformative constitutionalism and brought values of ideals of Liberty, Equality, and Fraternity in the language of the Constitution itself, from the Preamble across the entire canvas of the Indian Constitution," Justice Chandrachud correctly noted. According to Dr. Ambedkar, the purpose of a constitution is not limited to safeguarding fundamental rights; rather, it also includes the ability to liberate and empower oppressed and marginalized communities.

Gandhi viewed the caste question as a social issue, but Ambedkar regarded it as a political one. Gandhi felt that the situation could only be resolved by changing people's perceptions, but Ambedkar looked for political answers. Ambedkar felt that the caste system could not be changed because it was too engrained in society and wanted to see it completely abolished. Gandhi, on the other hand, attempted to alter the public's perspective. These caused the two to argue multiple times. However, an agreement was made with the Poona Pact to give the Dalits educational grants in addition to representation in the civil services.

Some of the harshest aspects of the caste system were eliminated during British colonial administration in India, although prejudice against Dalits persisted long after India attained independence in 1947. Although the Indian Constitution outlawed untouchability and established affirmative action initiatives to support Dalits, violence and discrimination against them continue. Dalits still experience prejudice in the workplace, in schools, and when attempting to obtain public services today. They frequently face violence, including rape and murder, as a result of their courage to stand out for their rights. India's democracy and social justice continue to face significant obstacles from the issue of caste-based discrimination, notwithstanding the government and civil society organizations' best efforts.

3. Legal Repercussions:

In addition to outlawing untouchability, Article 17 also lays out the legal repercussions for any infractions. The Indian government has passed several legislations to uphold Article 17's requirements and defend the legal rights of individuals who have been subjected to untouchability. To protect people's rights from the untouchable castes, laws like

as the Protection of Civil Rights Act, of 1955, were passed. It makes actions like enforcing impairments based on untouchability, social boycotts, and denying people access to public spaces illegal. Furthermore, those who belong to the Scheduled Castes and Scheduled Tribes are further protected under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. It seeks to guarantee the social, economic, and political empowerment of these marginalised communities and to stop crimes against them.

4. The Protection of Civil Rights Act, 1955:

To put a stop to the untouchability practice, the Untouchability (Offences) Act of 1955 was passed. The Act's goal was to establish penalties for the doctrine of untouchability and its application to the enforcement of any form of impairment. Any kind of untouchability is punishable under the Act by a minimum of one month's jail and a maximum of six months' imprisonment, as well as a fine of at least one hundred rupees and up to five hundred rupees. It is important to remember, though, that the word "untouchability" was not defined in the Act. The Committee on Untouchability, Economic, and Educational Development of the Scheduled Castes was established to review and suggest amendments to the Act to improve its effectiveness because this was one of its main flaws. After that, the Act was changed and renamed the Protection of Civil Rights Act of 1955. At that time, Article 17 of the Constitution was cited as the source of the word "civil rights." The revision also made the offenses non-compoundable, which increased the severity of the penalties. This was a significant change.

5. Obstacles and Advancements:

Despite notable advancements in tackling untouchability through Article 17 and related laws, obstacles still stand in the way of its total elimination. A casteless society is still a ways off due to ingrained social prejudices and customs. The government, individuals, and civil society organizations have all worked to increase awareness, encourage intercaste marriages, and give marginalized people access to education. To completely eradicate untouchability at the grassroots level, further work must be done.

6. The following are some instances of actions considered untouchable:

- Refusing to share food or beverages with people from lower castes or tribes.
- Preventing those from lower castes from accessing temples, mosques, or other places of worship.
- Enforcing lower caste members to carry out menial activities like handling dead animals or cleaning bathrooms.
- Refusing to provide lower caste members with work or educational possibilities.
- Putting people from lower castes in different neighbourhoods or living quarters.
- Refusing to grant access to common amenities like public transit or water supplies to individuals belonging to lower castes.
- Lower caste individuals are subject to societal constraints, such as being forbidden from wearing some types of jewellery or clothing.
- Inflicting physical harm or harassment on individuals belonging to lower castes.

7. Abolishing Untouchability:

In 1950, the Indian Constitution was ratified, outlawing untouchability and making it a criminal offense. Additionally, the government has put in place several affirmative action initiatives, including hiring and educational reservations for castes who are economically and socially disadvantaged. Special protection and punishment for crimes against members of the lower castes are provided by the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Untouchability does, however, still exist in some areas of India despite these attempts. Caste discrimination is still a serious social issue, especially in rural areas where customs and beliefs are strongly embedded. Through legislation, public awareness campaigns, and education initiatives, the government and civil society organizations are still working to end this practice.

8. Explanation of Article 17:

Untouchability in any form is forbidden by Article 17 of the Indian Constitution. It declares that "untouchability" has been eradicated and that using it in any way is forbidden. Any impairment resulting from "untouchability" will be enforced as a crime, subject to legal penalties. To guarantee the eradication of untouchability from Indian society and the protection of Dalits' rights, this provision was added to the Constitution. Discrimination and violence against Dalits persist in many places of India, despite the constitutional provisions and numerous laws implemented to protect their rights. They are excluded on a social, economic, and political level, and they have restricted access to jobs, healthcare,

and educational possibilities. Numerous Dalits are compelled to labor in low-paying tasks like manual scavenging, which entails cleaning up human waste despite being outlawed in some regions of India.

To improve the socioeconomic standing of Dalits, the government has launched several initiatives, including housing projects, financial aid for launching enterprises, and reservations in government employment and education. To yet, though, there has not been enough progress made to end Dalit discrimination and violence. Raising awareness and educating people about the problem of discrimination based on caste and the value of treating everyone with respect and dignity are crucial. In order to ensure that Dalits receive justice, the government must take strong action against individuals who abuse their rights. Then and only then will we be able to genuinely establish a society in which every person is treated equally, irrespective of caste or social status.

9. Advantages of Article 17 of the Indian Constitution:

This article makes untouchability a criminal offense and outlaws it.

Protection from discrimination: Dalits are legally protected against discrimination based on their social standing or caste under Article 17. It guarantees that they receive the same treatment and opportunities as other citizens.

Penalties for violators: By making practicing untouchability a crime, the article serves as a disincentive to individuals who might be prejudiced against Dalits. Punishment for offenders may include jail time and fines, which may lessen discrimination.

Dalits' Empowerment: By granting them the legal right to challenge injustice and pursue justice, Article 17 gives Dalits more power. Raising their voice and claiming their rights is beneficial.

Dalits are empowered by Article 17, which grants them the legal right to pursue justice and resist prejudice. They can have more social and economic mobility if they speak up and defend their rights.

Promotion of social equality: By outlawing the practice of untouchability, Article 17 works to advance social equality. It contributes to the development of a more inclusive society in which all people, regardless of caste or socioeconomic standing, are treated with decency and respect. Democracy is strengthened by Article 17, which guarantees equal rights and opportunity for all citizens. It contributes to the development of a more fair and just society, which is necessary for a democracy to function.

10. Article 17 of the Indian Constitution is facing challenges.

Absence of enforcement: Article 17 is not well implemented, and violators frequently escape punishment. The article's efficacy is compromised by its lack of enforcement, which also helps to keep Dalit discrimination alive.

Pervasive societal biases: It will take time to alter the deeply seated preconceptions that discriminate against Dalits in Indian society. Even though Article 17 has been in effect for more than 70 years, untouchability persists in numerous regions of the nation.

Caste-based politics: The application of Article 17 is seriously hampered by caste-based politics. Caste is a tactic that politicians frequently use to win votes; this helps to keep discrimination alive and impedes efforts to end untouchability.

Lack of knowledge: Many individuals are ignorant of their rights under Article 17, leaving them open to discrimination. More knowledge and instruction of the article and its ramifications are required.

Insufficient legal assistance: Dalits may not have access to sufficient legal assistance when they fight against discrimination, and they frequently confront legal obstacles in this regard. They may find it challenging to pursue justice and claim their rights under Article 17 as a result.

Justice Chandrachud of the Hon'ble Supreme Court of India said that the problem of untouchability encompasses all social prejudices rather than being limited to a technical regulation. Additionally, denying women access to the Sabarimala Temple would be untouchable. One of the main pillars of the fundamental right to equality is Article 17. In India, the caste system has been in place for many years. Caste division was only exacerbated by colonial control. This caused the people to differ from one another in terms of the sociocultural customs they adhered to. The minority was regarded as untouchables, while the majority referred to themselves as the elite group. They prohibited access to public education, economic possibilities in both the public and private sectors, the ability to worship in communal temples, and the sharing of communal resources like rivers and forests. The Constituent Assembly added Article 17 as a consolation after observing the injustices and disregard for social classes during the drafting of the Constitution. The Constituent Assembly overwhelmingly approved Article 17 because no one disputed the significance of the protection against untouchability.

Indian courts have made repeated suggestions that caste need not be the standard for determining what constitutes "backwardness," but that an alternative general test based on socioeconomic criteria should be developed to avoid some of the current constitutional and legal quandaries. Although some of these special agreements are set to expire in 1985, they will likely be extended. In the end, the oppressed everywhere, including the untouchables, must

take care of themselves. There hasn't been another leader from the ranks of the untouchables of comparable significance since Dr. B.R. Ambedkar, who was a key architect of the Indian Constitution.

11. Conclusion:

In summary, Article 17 of the Indian Constitution is an important clause that attempts to end untouchability and provide all citizens equal rights. Still, there are a few issues that must be resolved before this piece can be put into practice. Among the major obstacles that must be overcome are the absence of enforcement, ingrained social prejudices, politics based on caste, ignorance, and insufficient legal support. To create a society where everyone is treated with respect and dignity, regardless of caste or social rank, these issues must be addressed. We won't be able to fully realize the ideal of a just and equal society until then.

“Constitutional morality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil which is essentially undemocratic.”

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“Our struggle does not end so long as there is a single human being considered untouchable on account of his birth.”
- **M.K. Gandhi**

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