

THE MARGINALIZED IN INDIA AND CONSTITUTIONAL PROVISIONS: AN OVERVIEW

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Abstract

Since the Hindu social order, ages ago, was based on segregation, stratification and gradation, the caste groups which stood at the bottom of social pyramid, suffered extreme marginalization at the hands of upper castes. Being on the margin, they faced social discrimination, exploitation and every sort of exclusion. Sufferance and poverty was the badge of this marginalized class. Owing to this, after independence, many constitutional safeguards and empowering measures were provided so as to bring them into mainstream society. The constitutional provisions like equality before law (article 14), prohibition of discrimination on the basis of caste, creed or religion (article 15), abolition of untouchability (article 17), reservation of seats in assemblies and parliaments (article 330,332,334) reservation of jobs in state services (article 16, 320, 335), promotion of educational and economic interests of weaker sections and protection against all forms of exploitation (article 46) have brought social mobility, educational development, financial stability and most significantly honorable living to the marginalized classes and castes especially SCs and STs who are popularly known as dalits today. But at the same time, statistical data of National Crime Record Bureau (NCRB) over the years up to 2014 underlines the fact that crimes against dalits have been consistently increasing. This paper discusses about the constitutional provisions for the marginalized and how far the provisions have benefited the marginalized in India.

Keywords: marginalization, marginality, dalits, constitutional safeguards, constitutional provisions

Dr Babasaheb Ambedkar, being a victim of Hindu social order based on hierarchy devoted his life for fighting against the illogical and inhuman practices prevalent in the Indian society. He became a crusader against untouchability and fiery voice of the marginalized masses in the country.

Apart from freeing the subjugated masses from the slavery of Hinduism through conversion, Ambedkar did everything that he could do in order to bring the marginalized communities into the mainstream society. While working as chairman of draft committee for constitution, he made suitable lawful provisions to safeguard the interest of the untouchables and other marginalized classes and castes.

Constitutional safeguards for the Marginalized Classes and Castes

Ambedkar was aware of the pain and suffering the marginalized untouchables, shudras and many others had to undergo for ages. They all, along with Ambedkar, himself were victims of disparity, inequality and despicable practice of untouchability in the Hindu social order. Hence, Ambedkar introduced many protective measures in the constitution in order to enable the marginalized classes and castes so as to live a safe, secure and honorable life based on equality and dignity.

He specially introduced the article 17 in order to abolish the practice of untouchability. It states: “‘Untouchability’ is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of ‘Untouchability’ shall be an offence punishable in accordance with law’ (Jodhaka, 2012: p.128) Because of hierarchical gradation, Ambedkar firmly believed that the entire Hindu social system of *Chaturvarna* was based on inequality and disparity. Hence, it was imperative to establish equality through constitutional provisions. Owing to this, article 14 in the article stating ‘equality before law or equal protection of the laws’ puts an end to the notion of being higher or lower by caste. Now all are equal before law. Neither the *Bramhin* can claim any advantage of being superior nor the untouchables or the other marginalized can consider themselves to be inferior or at the bottom position. Article 15 prohibits the state from making discrimination on the ground of religion, race, caste, sex or place of birth.

Article 16 provides equal opportunity to all people for employment and appointment on any post under the states. The clause 4 of article 16 provides that the state can reserve appointments or posts in state services for any backward class, which in the opinion of the state, does not have sufficient representation. Later clause 4(a) was added in this article in 1995 vide amendment in 1995. This amendment restored reservation for the promotion of the SCs and STs by inserting clause 4(a) which mentions that ‘nothing in this article shall prevent the state from any provision for reservation in matters of promotion to any class or classes of posts in the services under the states in favour of the SCs and STs which in the opinion of the state, are not adequately represented in the services under the state.’

The cumulative effect of article 14, 15 and 17 was that the marginalized masses received lawfully acknowledged status of citizens of India. ‘However, given that Indian society was based on hierarchical values of caste, the exercise of citizenship rights by Dalits often generated social tension leading to attacks on Dalits by the so called upper caste.’ (ibid. p. 129) Hence Government of India had to enact other legislations to protect Dalits from violence of different kinds. The Untouchability Offence Act was passed in 1955 followed by the protection of Civil Rights Act in 1976 and Scheduled Caste and Scheduled Tribes Prevention of Atrocities Act in 1989.

Apart from these measures, article 338 of constitution has enabled Indian government to appoint a commissioner for SCs and STs in order to investigate all matters relating to the SCs and STs in

various states and report directly to the President of India about the worship of these safeguards. Later in 1978, Government of India decided to set up a multi-member commission called as National Commission for Scheduled Castes and Scheduled Tribes.

The constitution also provides reservation of seats for the backward sections in the Lok Sabha (Article 330) and in the Vidhan Sabhas (Article 334). Out of 545 seats in the Lok Sabha and 106 seats are reserved for the weaker sections. In pursuance of Article 332, reservation of seats for SCs and STs in the state Vidhan Sabhas (legislative assemblies) is provided.' (Joganand, 2012) Article 23 of the constitution prohibits traffic in human beings and beggar and other similar forms of forced labour and provides that any contravention of this provision shall be an offence punishable in accordance with law. Although article 23 does not specifically mention SCs and STs but since a majority of bonded laborers are member of SC/ST communities. This article has a special significance for these communities. In pursuance of this article, parliaments have enacted the Bonded Labor System (Abolition) Act, 1976.

Apart from providing political and social safeguards, the government of India also made a provision of educational safeguards for the SCs and STs who were on the margin of Indian society. The provision of quota system—reservation of seats in government run educational institutions and for employment in government or state sector jobs—was the most significant enabling measure to bring the deprived masses into mainstream society. Now some posts are reserved for backward classes in various government departments both at the central as well as state level vide article 16, 320, 335. These reservations have been offered according to the percentage of backward classes in the total population (ibid.p.317). Besides above safeguards numerous schemes have been launched by the government from time to time. For example Intergrated Rural Development Programme (IRDP), National Rural Employment Programme (NREP), Training of Rural Youth for Self-Employment (TRYSEM), Jawahar Rojgar Yojna, Tribal Development Programmes, Special Component Plan and the Scheduled Caste Development Corporation (ibid, p. 318).

Article 46 needs a special reference since it is a comprehensive article that ensures justice against all forms of exploitation. The article 46 states that 'the state shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from social injustice and all forms of exploitation.' So the constitution has provided all the essential protective measures by which the marginalized classes and castes (especially SCs and STs) can have equal status and life of dignity as a human being like others. They too can get opportunities to witness social, political, educational and economic development at par with others.

It is imperative to see how far the protective measures provided by the constitution have helped the dalits in their socio-economic development.

Dalits Today

Before embarking upon the plight of dalits today vis-à-vis constitutional provisions, it is imperative to understand the meaning of the term Dalits in the recent context. The term Dalit has been interchangeably used with term Scheduled Castes which include all historically discriminated communities of India, out-caste and untouchables (Sharma and Rashmi, 2003) who constitute about 16.5% of the entire population of India according to 1991 census (Webster, 2001) The protective measures offered by the constitution have enabled the dalits up to some extent to enjoy equality, honorable living, freedom from despicable practice of untouchability, humiliation and have widened the scope for social mobility in such areas as education, employment, industry, accumulation of wealth and political participation. The constitutional provisions have also bridged the gap between the upper castes and lower castes in the hierarchy. It has certainly helped to reduce the intensity of disparity and discrimination once faced by the dalits. The spread of education and awareness among the marginalized classes and castes have given them access to different jobs in government departments, public sector undertakings, political arena and educational institutions. The reservation of jobs has brought earnings and thereby financial stability, security and prestige. Overall, the dalits today are seemingly becoming a part of mainstream society.

It was expected that the constitutional provisions and their implementation will speed up the growth of the society. It will create a just society devoid of disparity, untouchability and discrimination on the basis of caste, varna or gender and thereby putting an end to the age-old exploitation of Dalits. But despite the protective as well as developmental constitutional provisions, social disabilities such as the caste system, untouchability and discrimination against women still persist in the society. Zajda et.all (2006) believes that development therefore has not benefited the poorer sections of the society including the Scheduled Castes and Tribes and backward classes Numerous events of killings, humiliation and exploitation of Dalits in the past decades as well as the happenings in the present period are testimony to the fact that despite protective measures and constitutional provisions, Dalits are being victimized. They are also being deprived of their human rights. Following instances are indicative of the pathetic scenario.

In 1994, the Ministry of Welfare submitted the Twelfth Annual Report on the Protection of Civil Rights Act, 1955. The report revealed the statistics of cases registered in 1991 against violation of human rights of SC/ST. South Indian states reported majority of cases including Tamil Nadu (861), Karnataka (722) and Andhra Pradesh (365) which collectively accounted for 52% of the total cases reported in the country. Cases reported in other states include Madhya Pradesh (384), Maharashtra (340) and Uttar Pradesh (296) (Sharma and Rashmi,2013,p.125).

The practice of untouchability, though abolished through legal instrument, still persist in India. The Human Rights Watch (2007) report referred the practice of untouchability in India as “Hidden Apartheid” Human Rights Watch Report (1999) states the dismal plight of Dalits in India in the following words:

“An estimated forty million people in India among them fifteen million children are bonded laborers, working in slave like conditions in order to pay off debts. The majority of them are Dalits. At least one million Dalits work as manual scavengers, clearing feces from latrines and disposing of dead animals with their bare hands. Dalits also comprise the majority of agricultural laborers who work for a few kilograms of rice, or 15-35 rupees (less than US one dollar) a day. Dalits throughout the country also suffer from de facto disenfranchisement. During elections, Dalits are routinely threatened and beaten by political party strongmen in order to compel them to vote for certain candidates. Dalits who run for political office in village councils and municipalities (though seats that have been constitutionally “reserved” for them) have been threatened with physical abuse and even death to get them to withdraw from the campaign” (PUCL, 1999)

Though this report is based on happenings of previous one calendar year, it is more or less the scenario of the decade of 1990.

In the last fifteen years, from year 2000 to 2015, the century has witnessed many cases of discrimination, humiliation and crimes against dalits. Even today, they are prohibited to avail water or entering the temple or facing social boycotts. The dalits are still threatened and beaten up by the higher caste and OBCs and the police refused to register cases under SC/ST(PoA) Act (The Hindu,2013). Even if the cases are registered, their pendency rate and conviction rate is extremely low. The statistical data compiled and provided by National Crime Record Bureau (NCRB) shows that the total number of registered crimes committed against SCs is consistently increasing: 14318 crimes against SCs in 1981, rising to 17646 in 1991, 33501 in 2001 with some variation in the intervening years reached at 33594 in 2009. These figures of crimes in the last five years are also seen increasing: 32712 in 2010, 33719 in 2011,33655 in 2012, 39408 in 2013 reaching the highest figure 47064 in 2014(Source: NCRB). This is the data of registered cases only but actual figure of cases may be more. A Ramaiah (2013), a visiting fellow at London School of Economics and Political Science (blogs. Lse.ac.uk.7southasia 28.05.3013, Growing crimes against Dalits in India despite special laws) reports: “It is well documented that police are reluctant to register complaints about caste based discrimination and violence. So, national statistics on caste crimes against SCs is grossly under-estimated figures.”

Untouchability, though legally banned is still persistent in Indian society. A Ramaiah says that according to one study, untouchability is practiced in 80 per cent of Indian villages. Following incident reported by BBC, on 27 June, 2012 reported an incident of practice of untouchability which happened with Dr Sonkar who is a doctorate in law and occupying a teaching position at Delhi University. When the teashop owner came to know that Dr. Sonkar is a dalit , he told him to wash his glass of tea after drinking it. There are thousands of such cases of caste based humiliation across the country. The leading newspapers and periodicals are often filled with such news.

Conclusion

In nutshell, the provisions in the constitution have helped for the social, economic and political development of the marginalized dalits. It is only because of the legal provisions that dalits have created an identity for themselves in the society. With the access to education, the dalits are enjoying financial uplift and security. Reservation of jobs in various state services has empowered dalits. Their political participation has been ensured by constitution by the provision of seats in legislative bodies and other representation institutions. But at the same time, crime cases recorded by NCRB indicate that biased and cast based attitude is leading to exploitation and killings of dalits across the country. The consistent rise in the number of cases of crimes is indicative of the fact that dalits are victimized every year by the non-dalits especially the upper castes. Although intensity of observance of caste is receding day by day but dalits are yet to witness and experience the radical change.

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