



Constitutional protections against caste based discrimination in India: Emerging judicial trends

Ajit Singh Chahal

Associate Professor, Department of Law, Kurukshetra University, Kurukshetra, Haryana, India

Abstract

Equality of status and promotion of fraternity assuring the dignity of the individual are the basic pillars of the preambular concept of Indian Constitution but castism, sectional & religious diversities and parochialism are disintegrating the people in India. Earlier, Indian society was based on four varnas and later on caste system developed by which the concept of untouchability evolved. During the process of framing of the Indian Constitution, Babasaheb Dr. B. R. Ambedkar made the provision under Indian Constitution for abolition of untouchability. In this modern age the outward appearance of untouchability has been changed from physical untouchability into psychological untouchability. There are so many castes in Backward Classes which are also subjected of discrimination either by physical untouchability or psychological untouchability. Article 17 abolished 'Untouchability' and forbids its practice in any form and made it an offence punishable in accordance with law. Later on, the Parliament Untouchability (offences) Act 1955 and amended the Untouchability (offences) Act 1955 which was renamed as the Protection of Civil Rights Act, 1955. After that the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been passed. The execution of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not proper because the victims are pressurized socially to withdraw the cases. Later on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was accordingly amended in 2015 and 2018 due to some erred judicial decisions. Now, the issue is again under consideration due to the Apex Court Judgment dated 05th November, 2020. So, we have to discuss caste based discriminations, its historical perspective, constituent assembly debates, constitutional perspective, statutory provisions for protections against caste based discriminations and emerging judicial trends in India for the purpose of this research work.

Keywords: discrimination, untouchability, physical untouchability, psychological untouchability & inequalities etc

Introduction

Equality of status and promotion of fraternity assuring the dignity of the individual are the basic pillars of the preambular concept of Indian Constitution but castism, sectional & religious diversities and parochialism are disintegrating the people in India. Iniquitous conditions, inequalities and discrimination in social and economic life of the people are creating disturbances in the development of the country. Without equality of status and of opportunity, the dignity of the individual cannot be maintained at all. "Untouchability" stands an impediment in the way for establishing an egalitarian social order in Republic Bharat. "Untouchability" is like a bane and blot on civilized society. Article 17 of the Constitution of India abolishes "Untouchability" and its practice in any form is forbidden by law and shall be an offence punishable in accordance with law. In exercise of the power in second part of Article 17 and Article 35 (a) (ii), the Untouchability (Offences) Act, 1955 was made which was renamed in 1976 as "Protection of Civil Rights Act." Later on the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 was passed and accordingly amended in 2015 and 2018 due to some erred judicial decisions. Now, the issue is again under consideration due to the Apex Court Judgment dated 05th November, 2020.

So, we have to discuss caste based discriminations, its historical perspective, constituent assembly debates, constitutional perspective, statutory provisions for protections against caste based discriminations and emerging judicial trends in India for the purpose of this

research work.

Historical Perspective

Indian orthodox caste-ridden society is not treating the people of deprived groups equally. They are always disregarded by upper caste peoples and they are denied essential human rights. "Chaturvarnya system" is base caste-ridden Hindu society and *Brahmans*, *Kshatriyas*, *Vaishyas* and *Sudras* are its four pillars on which it is embedded. Further, it is based on thousands of castes and sub-castes which is not found anywhere in the world except in India. The status of every individuals is predetermined on the basis of caste in which he born and it cannot be altered even by the potential and ability acclaimed by the individual. Numerous social reformers like *Mahatma Jyotiba Phule*, *Savitribai Phule*, *Usman Seikh*, *Fatima Seikh*, *Chattrapati Sahuji Maharaj* and *Periar E.V. Ramaswami Naiker* have worked against the 'caste system' and 'untouchability' but this monster is alive till today in modern India. Babasaheb Dr. B. R. Ambedkar provided Constitutional Guarantees and protections for civil liberties for individuals through Constitution of India.

Even after these Constitutional Guarantees in India, certain examples are available in Independent India which tell us totally different situations regarding dignified peoples of deprived classes namely Babu Jagjivan Ram ^[1], Shri *Jagannath Pahadia* ^[2], Central Minister's son ^[3], Sweeper Dalit Women ^[4], Judges of High Court ^[5], Officer in Delhi ^[6] and Mass Murders ^[7]

Gang Rapes Case ^[8] are some examples of this caste-ridden

society. Even persons who improved their social status, economic position or holders of constitutional offices are not exceptions to the wrath and curse of untouchability. So, Babasaheb Dr. B. R. Ambedkar was right when he wrote, "untouchables are born and die as untouchables".

Further, Babasaheb Dr. B. R. Ambedkar said^[9],
"to try to remove untouchability without striking at the root of Varnavyavastha is simply to treat the outward symptoms of a disease or to draw a line on the surface of water. As in the heart of their hearts dvijas do not want to give social equality to the so-called touchable and untouchable Shudras, so they refuse to break caste, and give liberal donations for the removal of untouchability, simply to evade the issue. To seek the help of the Shastras for the removal of untouchability and caste is simply to wash mud with mud."

L. Elayaperumal^[10] said,
"untouchability is a basic and unique feature and inseparably linked up with the caste system and social set up based upon it. It does not require much research to realise that the phenomenon of untouchability in this country is fundamentally of a religious or political origin. Untouchability is not a separate institution by itself; it is a corollary of the institution of the caste system of Hindu Society. It is an attitude on the part of a whole group of people. It is a spirit of social aggression that underlies this attitude."

Constituent Assembly Debates

Article 17 provides about the abolition of Untouchability and prohibits its practice in any form and made it punishable in accordance with law. Before finalization it was earnestly discussed on the floor of the Constituent Assembly of India during its debates as Article 11 in Draft Constitution on 29th November, 1948. Prof. Shibban Lal Saksena (United Provinces: General), the Honourable Dr. B. R. Ambedkar from Bombay (General), the Honourable Shri B. G. Kher (Bombay: General), Shri S. Nagappa, Shri R. K. Sidhwa, Shri Mahavir Tyagi (United Provinces: General), Mr. Mohd. Tahir, Mr. Naziruddin Ahmad (West Bengal: Muslim), Shri V. I. Muniswamy Pillai (Madras: General), Dr. Monomohon Das (West Bengal: General), Shri Santanu Kumar Das (Orissa: General), Shrimati Dakshayani Velayudhan (Madras: General) and Prof. K. T. Shah, sincerely discussed about the abolition of Untouchability, such as:

Prof. Shibban Lal Saksena^[11] said,
"Under Article 11 no one can discriminate against any person on the ground of untouchability, as it has been made an offence punishable by law. I may also point out the revolutionary character of this article. I know that there are hundreds of Hindu shops where food is served to Hindus only. Food is a matter where Hindus have got special habits and they generally will not allow anybody to enter the place where they eat food. I hope that the Hindu society will realize that they have now to change those habits and that anybody who is not a Hindu will be able to enter these shops or hotels where so far food is served to Hindus only. I think this is a very serious thing because henceforth it will be a fundamental right of every citizen to enter any Hindu Hotel. Anybody can now claim entry to any place where food is sold. I therefore think that we must prepare the ground to give effect to this change which is of a far-reaching character. Otherwise, there will be clashes every day."

The Honourable Dr. B. R. Ambedkar^[12] said,

"My Friend Mr. Tahir who moved this amendment referred particularly to the position of the untouchables and he said that in regard to these acts which prevent the untouchables from sharing equally the privileges enjoyed by the general public, we will not be successful in achieving our purpose unless these acts, preventing them from using places of public resort, were made offences. There is no doubt that there is no difference of opinion between him and other Members of this House in this matter because all of us desire that this unfortunate class should be entitled to the same privileges as members of the other communities without any let or hindrance from anybody. But he will see that that purpose is carried out entirely by the provisions contained in article 11 which specifically deals with untouchability; instead of leaving it to Parliament or to the State to make it a crime, the article itself declares that any such interference with their rights shall be treated as an offence punishable by law. If his view is that there should be a provision in the Constitution dealing generally with acts which interfere with the provisions contained in Article 9, I would like to draw his attention to Article 27 in the Constitution which places an obligation on Parliament to make laws declaring such interferences to be offences punishable by law. The reason why such power is given to Parliament is because it is felt that any offence which deals with the Fundamental Rights should be uniform throughout the territory of India, which would not be the case if this power was left to the different States and Provinces to regulate as they like. My submission therefore is that, so far as this point is concerned, the Constitution contains ample provision and nothing more is really necessary."

Further, he^[13] said,

"With regard to amendment moved by Professor K.T. Shah, the object of which is to add Scheduled Castes and Scheduled Tribes along with women and children, I am afraid it may have just the opposite effect. The object which all of us have in mind is that the Scheduled Castes and Scheduled Tribes should not be segregated from the general public. For instance, none of us, I think, would like that a separate school should be established for the Scheduled Castes when there is a general school in the village open to the children of the entire community. If these words are added, it will probably give a handle for a State to say, that well, we are making special provision for the Scheduled Caste. Then I come to my Friend Mr. Nagappa as he has asked me to explain some of the words which have been used in this Article. His first question was whether shop included laundry and shaving saloon. Well, so far as I am concerned, I have not the least doubt that the word shop does include laundry and shaving place. To define the word shop in the most generic term one can think of is to state that shop is a place where the owner is prepared to offer his service to anybody who is prepared to go there seeking his service. A laundryman therefore would be a man sitting in his shop offering to serve the public in a particular respect, namely, wash the dirty cloths of a customer. Similarly, the owner of a shaving saloon would be sitting there offering his service for any person who enters his saloon."

The Honourable Shri B. G. Kher^[14] said,

"Does it include the offices of a doctor and a lawyer?"

The Honourable Dr. B. R. Ambedkar^[15] said,

"Certainly it will include anybody who offers his services. I am using it in a generic sense. I should like to point out therefore that the word shop used here is not used in the

limited sense of permitting entry. It is used in the larger sense of requiring the services if the terms of service are agreed to. The second question put to me was whether 'place of public resort' includes burial grounds. I should have thought that very few people would be interested in the burial ground, because nobody would care to know what happens to him after he is dead. But, as my Friend Mr. Nagappa is interested in the point should say that I have no doubt that a place of public resort would include a burial ground subject to the fact that such a burial ground is maintained wholly or partly out of public funds. Where there are no burial grounds maintained by a municipality or local board or taluk board or Provincial Government or village panchayat nobody of course has any right, because there is no public place about which anybody can make a claim for entry. But if there is a burial ground maintained by the State out of State funds, then obviously every person would have every right to have his body buried or cremated therein. Then my Friend asked me whether ponds are included in tanks. The answer is categorically in the affirmative. A tank is a larger thing which must include a pond. The other question that he asked me was whether rivers, streams, canals and water sources would be open to the untouchables. Wells, rivers, streams and canals no doubt would not come under Article 9 but they would certainly be covered by the provisions of Article 11 which make any interference with the rights of an untouchable for equal treatment with the members of the other communities an offence. Therefore my answer to my Friend Mr. Nagappa is that he need have no fears with regard to the use of rivers, streams, canals, etc., because it is perfectly possible for the Parliament to make any law under Article 11 to remove any such disability if found."

Shri R. K. Sidhwa ^[16] said,

"What about the interpretation of the word 'public'?"

The Honourable Dr. B. R. Ambedkar ^[17] said,

"My Friend Mr. Sidhwa read out some definition from the Indian Penal Code of the word public and said that the word 'public' there was used in a very limited sense as belonging to a class. I should like to draw his attention to the fact that the word public is used here in a special sense. A place is a place of public resort provided it is maintained wholly or partly out of State funds. It has nothing to do with the definition given in the Indian Penal Code."

While speaking on untouchability Mr. Naziruddin Ahmad ^[18] said,

"The word untouchability has no legal meaning, although politically we are all well aware of it; but it may lead to a considerable amount of misunderstanding as in a legal expression. The word 'untouchable' can be applied to so many variety of things that we cannot leave it at that. It may be that a man suffering from an epidemic or contagious disease is an untouchable; then certain kinds of food are untouchable to Hindus and Muslims. According to certain ideas women of other families are untouchables. Then according to Pandit Thakurdas Bhargava, a wife below 15 would be untouchable to her loving husband on the ground that it would be 'marital misbehaviour'. I beg to submit, Sir, that the word 'untouchable' is rather loose. That is why I have attempted to give it a better shape; that no one on account of his religion or caste be regarded as untouchable. Untouchability on the ground of religion or caste is what is prohibited."

Shri V. I. Muniswamy Pillai ^[19] said,

"Mr. Vice-President, it is a matter of great satisfaction that this Constitution has brought out a very important item and thereby untouchability is to be abolished in this great land of ours. Sir, though article 9 concedes many of the facilities that are required for the abolition of untouchability, the very clause about untouchability and its abolition goes a long way to show to the world that the unfortunate communities that are called 'untouchables' will find solace when this Constitution comes into effect. It is not that a certain section of the Indian community that will be benefited by this enactment, but a sixth of the population of the whole of India will welcome the introduction and the adoption of a section to root out the very practice of untouchability in this country. Sir, under the device of caste distinction a certain section of people have been brought under the rope of untouchability, who have been suffering for ages under the tyranny of the so called caste Hindus and all those people who style themselves as landlords and zamindars, and were thus not allowed the ordinary rudimentary facilities required for a human being."

Dr. Monomohon Das ^[20] said,

"Mr. Vice-President, Sir, this clause about untouchability is one of the most important of the fundamental rights. This clause does not propose to give any special privileges and safeguards to some minority community, but it proposes to save one-sixth of the Indian population from perpetual subjugation and despair, from perpetual humiliation and disgrace. The custom of untouchability has not only thrown millions of the Indian population into the dark abyss of gloom and despair, shame and disgrace, but it has also eaten into the very vitality of our nation. I have not a jolt of doubt, Sir, that this clause will be accepted by this House unanimously; not only the Indian National Congress is pledged to it, but for the sake of fairness and justice to the millions of untouchables of this land, for the sake of sustaining our goodwill and reputation beyond the boundaries of India, this clause which makes the practice of untouchability a punishable crime must find a place in the Constitution of free and independent India. I refuse to believe, Sir, that there is even a single soul in this august body who opposes the spirit and principle contained in this article. So, I think, Sir, that today the 29th November 1948 is a great and memorable day for us the untouchables. This day will go down in history as the day of deliverance, as the day of resurrection of the 5 Crores of Indian people who live in the length and breadth of this country. Standing on the threshold of this new era, at least for us, the untouchables."

Shri Santanu Kumar Das ^[21] said,

"Mr. Vice-President, I am grateful to you, Sir, for giving me an opportunity to express my views on clause 11 of the Draft Constitution. This clause is intended to abolish the social inequity, the social stigma and the social disabilities in our society. Everybody desires that the practice of untouchability should somehow be abolished but nobody appears to be very helpful in its abolition. When everybody desires that this practice should be abolished, I fail to see why so much time should be wasted in a long discussion over it. The fact is that we merely want to enact laws about it and expect the rural people to observe these laws. We must ourselves first observe the law for otherwise there would be no sense in asking others to act upon it. If we fail to observe it, it would be impossible to root out this evil."

Shrimati Dakshayani Velayudhan ^[22] said,

“Mr. Vice-President, Sir, we cannot expect a Constitution without a clause relating to untouchability because the Chairman of the Drafting Committee himself belongs to the untouchable community. I am not going into the details of the history and the work done by all the religious heads from time immemorial. You know that all the religious teachers were against the practice of untouchability.”

After overall discussion and the initiation by the Vice-President, Article 11 of the Draft Constitution which is now Article 17 added to the Constitution of India for the protections against caste based discriminations.

Constitutional Perspective

The Constitution of India provides many provisions for the protections against caste based discriminations under the Preamble, Article 14, 15, 16, 17, 23 (2), 29 (2), 46 and 325 specifically. Such as:

The Preamble

The Preamble of the Indian Constitution secures *equality of status* for every citizen and promotes *fraternity assuring the dignity of individual* in integrated India. Dignity of person is merely an illusion without equality of status and opportunity.

Article 14

Article 14 provides, “Equality before law” and protects all against inequality, *“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”*

Article 15

Article 15 provides, “Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth” and endow with, *“(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. (2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any 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.”*

Article 16

Article 16 provides, “Equality of opportunity in matters of public employment” and ensures, *“(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.”*

Article 17

Article 17 provides, “Abolition of Untouchability” and endow with that, *“‘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.”*

Article 23 (2)

Article 23 (2) provides, *“Nothing in this article shall*

prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.”

Article 29 (2)

Article 29 (2) also provides, *“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.”*

Article 46

Article 46 provides, “Promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections” and protects, *“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 the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.”*

Article 325

Article 325 also provides, “No person to be ineligible for inclusion in, or to claim to be included in a special, electoral roll on grounds of religion, race, caste or sex” and protects against exclusion, *“There shall be one general electoral roll for every territorial constituency for election to either House of Parliament or to the House or either House of the Legislature of a State and no person shall be ineligible for inclusion in any such roll or claim to be included in any special electoral roll for any such constituency on grounds only of religion, race, caste, sex or any of them.”*

Statutory Provisions for Proctetions

In India there various legislations are passed to protect the people against caste based discriminations, such as; The Untouchability (Offences) Act, 1955, The Protection of Civil Rights Act, 1955 and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as amended time to time:

The Untouchability (Offences) Act, 1955

For abolition of “untouchability” the Parliament had enacted the “Untouchability (Offences) Act, 1955” in order to implement the mandate of Article 17. This Act contained a significant provision that where any of the forbidden practices is committed in relation to a member of a Scheduled Caste then the Court shall presume unless the contrary is proved that such act was committed on the ground of “Untouchability”. This implied that the burden of the proof lies on the accused and not on the prosecution.

The Protection of Civil Rights Act, 1955

After commencement of the Untouchability (Offences) Act, 1955, there was a general feeling of dissatisfaction as the legislation failed to serve the purpose for which it was enacted. Therefore, a Committee was appointed by the Government of India in April 1965 to study, inter-alia, problems of Untouchability vis-a-vis the working of the Untouchability (Offences) Act, 1955 and to suggest changes therein. The report of the Committee constituted under the Chairmanship of Shri Ilaya Perumal was submitted in 1969. In 1976, the Parliament amended the Untouchability (offences) Act 1955 which was renamed as the Protection of

Civil Rights Act, 1955.

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been passed by Indian Parliament. The aim of this Act is to protect the rights of Scheduled Castes and the Scheduled Tribes. It curbs all the violence against Scheduled Castes and the Scheduled Tribes and gives them a life of dignity. The act makes sure that just like other sections of society, they also get economically and socially empowered. Later on this Act accordingly amended in 2015 & in 2018.

Emerging Judicial Trends

In *State of Karnataka v. Appa Balu Ingale*,^[23] the Supreme Court of India held,

“Neither the Constitution of India nor the Act defined ‘Untouchability’. According to Babasaheb Dr. B. R. Ambedkar said that the *untouchability is the notion of defilement, pollution, contamination and the ways and means of getting rid of that defilement. It is a permanent hereditary stain which nothing can cleanse.* The Parliamentary Committee on *Untouchability* headed by L. Elayaperumal in their 1969 report stated that *untouchability is a basic and unique feature and inseparably linked up with the caste system and social set up based upon it. It does not require much research to realise that the phenomenon of untouchability in this country is fundamentally of a religious or political origin. Untouchability is not a separate institution by itself; it is a corollary of the institution of the caste system of Hindu Society. It is an attitude on the part of a whole group of people. It is a spirit of social aggression that underlies this attitude.*”^[24]

In *Peoples Union for Democratic Rights v. Union of India*,^[25] the Supreme Court of India held,

“Whenever a fundamental right contained in Article 17, 23 or 24 was being violated by a private individual, it would be the constitutional obligation of the State to take necessary steps to interdict such violation and ensure that such person should respect that right. The State is not absolved from its constitutional obligation even if the aggrieved person could enforce his invaded fundamental right.”

In *State of Karnataka v. Appa Balu Ingale*,^[26] the Supreme Court expressed its concern over the continuance of the practice of untouchability. The court observed,

“It is being practiced with impunity irrespective of the fact of its abrogation. It is imperative to deal with the problem from sociological and constitutional perspectives and also from the perspectives of criminal jurisprudence. The evil of untouchability was not founded on mens-rea and therefore, the court should adopt a psychological approach in appreciating the evidence and should not be influenced by deep seated prejudices or predilections covertly found in other walks of life about this evil.”

In *State of MP v. Ram Kishna Balothia*,^[27] the Supreme Court upheld the validity of section 18 of the Act and held,

“To prevent the commission of offences or atrocities against the members of the Scheduled Castes and the Scheduled Tribes and for providing the special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences, Parliament enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989. Section 18 of the Act excludes the application of

Section 438 of the Cr. P.C. 1973 to cases arising under the Act. Therefore, This Court upheld the validity of section 18 of the Act in the present case.”

In *State of Kerala v. Chandramohanam*,^[28] the Supreme Court held,

“As regards atrocities committed against a Hindu SC/ST who had converted to another religion laying down the broad proposition of law, the Supreme Court ruled that a converted persons would not cease to be a member of the SC/ST community, if he was following the customs, rituals, customary laws of succession, inheritance, marriage and other traits required to be followed by the members of that community.”

In *State of UP v. Ram Sanjivan*,^[29] the Supreme Court held, “It is absolutely imperative to abolish the caste system as expeditiously as possible for the smooth functioning of Democracy based on the principle of Rule of Law.”

In *Kailas v. State of Maharashtra*,^[30] the Supreme Court of India held,

“In the modern age, nobody's feelings should be hurt. In particular, in a country like India with so much diversity we must take care not to insult anyone's feelings on account of his caste, religion, tribe, language, etc. Only then can we keep our country united and strong.”

The Hon'ble Supreme Court in *Vilas Pandurang Pawar v. State of Maharashtra*,^[31] has considered the provisions of Section 18 of SCs STs (POA) Act, 1989 and held,

“Section 18 of the SC/ST Act creates a bar for invoking Section 438 of the Code. However, a duty is cast on the court to verify the averments in the complaint and to find out whether an offence under Section 3(1) of the SC/ST Act has been prima facie made out. In other words, if there is a specific averment in the complaint, namely, insult or intimidation with intent to humiliate by calling with caste name, the accused persons are not entitled to anticipatory bail. *The scope of Section 18 of the SC/ST Act read with Section 438 of the Code is such that it creates a specific bar in the grant of anticipatory bail. When an offence is registered against a person under the provisions of the SC/ST Act, no Court shall entertain application for anticipatory bail, unless it prima facie finds that such an offence is not made out. Moreover, while considering the application for bail, scope for appreciation of evidence and other material on record is limited. Court is not expected to indulge in critical analysis of the evidence on record. When a provision has been enacted in the Special Act to protect the persons who belong to the Scheduled Castes and the Scheduled Tribes and a bar has been imposed in granting bail under Section 438 of the Code, the provision in the Special Act cannot be easily brushed aside by elaborate discussion on the evidence.*”^[32]

In *Bachu Das v. State of Bihar*,^[33] the Supreme Court held as under:

“In the light of the factual details, as found in the order of the learned Sessions Judge, Saran at Chapra, dated 28-11-2008, and in the light of the statutory provision as interpreted by this Court in the above cited decision, we are satisfied that the High Court has *committed an error in granting anticipatory bail.* Accordingly, the said order is set aside. Respondents 2 to 8-accused are granted four weeks' time from today to surrender before the appropriate court and seek for regular bail.”

In *Manju Devi v. Onkarjit Singh Ahluwalia*,^[34] it has been held by the Supreme Court,

“It is undoubtedly true that Section 438 of the Code, which is available to an accused in respect of offences under the IPC, is not available in respect of offences under the SC/ST Act. The offences enumerated under the SC/ST Act fall into a separate and special class. Article 17 of the Constitution expressly deals with abolition of ‘untouchability’ and forbids its practice in any form and also provides that enforcement of any disability arising out of ‘untouchability’ shall be an offence punishable in accordance with law. The offences, therefore, which are enumerated under Section 3(1) of the SC/ST Act arise out of the practice of ‘untouchability’. It is in this context that certain special provisions have been made in the SC/ST Act, including the impugned provision under Section 18 which is before us. The exclusion of Section 438 of the Code in connection with offences under the SC/ST Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail.”^[35]

In *Dr. Subhash Kashinath Mahajan v. State of Maharashtra*,^[36] the Supreme Court held,

“As far as the present case is concerned, we find merit in the submissions of learned amicus that the proceedings against the appellants are liable to be quashed.

Our conclusions are as follows:

i) Proceedings in the present case are clear abuse of process of court and are quashed.

ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no prima facie case is made out or where on judicial scrutiny the complaint is found to be prima facie mala fide. We approve the view taken and approach of the Gujarat High Court in *Pankaj D Suthar* (supra) and *Dr. N.T. Desai* (supra) and clarify the judgments of this Court in *Balothia* (supra) and *Manju Devi* (supra);

iii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.

iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.

v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.”^[37]

In *Union of India v. State of Maharashtra and Ors.*,^[38] the Supreme Court of India held,

“The creation of a casteless society is the ultimate aim. We conclude with a pious hope that a day would come, as expected by the framers of the Constitution, when we do not require any such legislation like Act of 1989, and there is no need to provide for any reservation to SCs/STs/OBCs, and only one class of human exist equal in all respects and no caste system or class of SCs/STs or OBCs exist, all citizens are emancipated and become equal as per Constitutional goal.

We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of

protective discrimination in favour of downtrodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of Constitution of India. Resultantly, we are of the considered opinion that direction Nos.(iii) and (iv) issued by this Court deserve to be and are hereby recalled and consequently we hold that direction No. (v) also vanishes. The review petitions are allowed to the extent mentioned above.”^[39]

In *Prathvi Raj Chauhan v. Union of India & Ors.*,^[40] the Supreme Court of India held,

“Concerning the provisions contained in section 18A, suffice it to observe that with respect to preliminary inquiry for registration of FIR, we have already recalled the general directions (iii) and (iv) issued in *Dr. Subhash Kashinath’s* case (supra). A preliminary inquiry is permissible only in the circumstances as per the law laid down by a Constitution Bench of this Court in *Lalita Kumari v. Government of U.P.*, (2014) 2 SCC 1, shall hold good as explained in the order passed by this Court in the review petitions on 1.10.2019 and the amended provisions of section 18A have to be interpreted accordingly.

The section 18A(i) was inserted owing to the decision of this Court in *Dr. Subhash Kashinath* (supra), which made it necessary to obtain the approval of the appointing authority concerning a public servant and the SSP in the case of arrest of accused persons. This Court has also recalled that direction on Review Petition (CrI.) No.228 of 2018 decided on 1.10.2019. Thus, the provisions which have been made in section 18A are rendered of academic use as they were enacted to take care of mandate issued in *Dr. Subhash Kashinath* (supra) which no more prevails. The provisions were already in section 18 of the Act with respect to anticipatory bail.

Concerning the applicability of provisions of section 438 Cr.PC, it shall not apply to the cases under Act of 1989. However, if the complaint does not make out a prima facie case for applicability of the provisions of the Act of 1989, the bar created by section 18 and 18A(2) shall not apply. We have clarified this aspect while deciding the review petitions.

The court can, in exceptional cases, exercise power under section 482 Cr.PC for quashing the cases to prevent misuse of provisions on settled parameters, as already observed while deciding the review petitions. The legal position is clear, and no argument to the contrary has been raised.”^[41]

In *Hitesh Verma v. The State of Uttarakhand & Anr.*,^[42] the Supreme Court of India held,

“The Act was enacted to improve the social economic conditions of the vulnerable sections of the society as they have been subjected to various offences such as indignities, humiliations and harassment. They have been deprived of life and property as well. The object of the Act is thus to punish the violators who inflict indignities, humiliations and harassment and commit the offence as defined under Section 3 of the Act. The Act is thus intended to punish the acts of the upper caste against the vulnerable section of the society for the reason that they belong to a particular community.

The offence under Section 3 (1) (r) of the Act would indicate the ingredient of intentional insult and intimidation with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe. All insults or intimidations to a person will not be an offence under the Act unless such insult or

intimidation is on account of victim belonging to Scheduled Caste or Scheduled Tribe. The object of the Act is to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes as they are denied number of civil rights. Thus, an offence under the Act would be made out when a member of the vulnerable section of the Society is subjected to indignities, humiliations and harassment. The assertion of title over the land by either of the parties is not due to the indignities, humiliations or harassment. Every citizen has a right to avail their remedies in accordance with law. Therefore, if the appellant or his family members have invoked jurisdiction of the civil court, or that respondent No.2 has invoked the jurisdiction of the civil court, then the parties are availing their remedies in accordance with the procedure established by law. Such action is not for the reason that respondent No.2 is member of Scheduled Caste.”^[43]

Conclusion and Suggestions

Earlier, Indian society was based on four varnas and later on caste system developed by which the concept of untouchability evolved. It means untouchability is a direct product of the varnas and caste system. During the process of framing of the Indian Constitution, Babasaheb Dr. B. R. Ambedkar made the provision under Indian Constitution for abolition of untouchability. Article 17 abolished ‘Untouchability’ and forbids its practice in any form and made it an offence punishable in accordance with law. Later on, the Parliament Untouchability (offences) Act 1955 and amended the Untouchability (offences) Act 1955 which was renamed as the Protection of Civil Rights Act, 1955. After that the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 has been passed and amended accordingly by the Indian Parliament to prevent the commission of offences of atrocities against the members of the Scheduled Castes and the Scheduled Tribes. The execution of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is not proper because the victims are pressurized socially to withdraw the cases. In this modern age the outward appearance of untouchability has been changed from physical untouchability into psychological untouchability. There are so many castes in Backward Classes which are also subjected of discrimination either by physical untouchability or psychological untouchability. All such castes are to be protected against such caste based discriminations or untouchability. Psychological untouchability is more dangerous than physical untouchability. Therefore, this present Act should be renamed as the Prevention of Caste Based Atrocities and Abolition of Untouchability Act with inclusion of other castes subjected such discrimination.

References

1. The statue of *Swami Sampuranand* at Varanasi when unveiled by 4th Dy. Prime Minister of Free India in February, 1978, Sri Babuji, Jagjivan Ram, it was believed to have been defiled and was purified ceremoniously with water brought from Ganges with all religious fervour, a repetition of Mahad Tankwater purification with mounds of cow dung, cow urine and milk, an episode of March 1927 when Ambedkar and his colleagues drank water taken from the tank.
2. At a dinner hosted by the Speaker of the Rajasthan Legislative Assembly in honour of the Chief Minister, *Shri Jagannath Pahadia, the wife of the Speaker trembled to serve food to the Chief Minister* thinking to have been polluted.
3. A Central Minister's son highly-educated and economically well off, when had inter-caste marriage, the bride's father, whose annual income is not a month's salary of the Manager of the boy, i.e. even of humble means, *neither celebrated the marriage nor visited her house, nor even permitted her to visit his house for the past ten years.*
4. On October 30, 1978, the Doctor in Govt. Hospital in Monger did not admit a Sweeper Dalit women, who was struggling for life.
5. A Dalit Judge in north India High Court could not secure a house and had to get posted to another place whereat he has his abode. A Judge of a south India High Court *has not touched even water in the houses of Dalit or backward class judges.*
6. Even in Delhi, the capital of the country, in 1991 the Dalit officer had to vacate the rented house due to practice of untouchability (vide 21st report of SC & ST Commission, p. 165).
7. Mass murders from *Belchi in North to Tsundur in South India.*
8. Gang Rapes Case of Dalit women and arson of their huts. the mass movement by women volunteers to stop blatant practice of untouchability in the hotels in Chittoor Dist.of Andhra Pradesh organised by Gita Ramaswamy, a noted social worker and journalist reported in an article titled "*Ambedkar to Ayodhya*" in the Mainstream dated January 5, 1991 are only illustrative of the relentless practice of untouchability let alone, humiliations to countless Dalits which are of every day's routine.
9. "Annihilation of Caste" at pp. 84-85.
10. Elayaperumal L, Head of the Parliamentary Committee on Untouchability in 1969.
11. From United Provinces: General, on Monday, 29th November 1948, Constituent Assembly Debates (Hereinafter called CAD), Vol. - VII, p. 659.
12. From Bombay: General Id., pp. 660-61.
13. Id., p. 661.
14. Ibid.
15. Id., pp. 661-62.
16. Ibid.
17. Ibid.
18. West Bengal: Muslim; on Monday, 29th November 1948, CAD, Vol. - VII, p. 665.
19. Madras: General; Ibid.
20. West Bengal: General; Id., 665-66.
21. Orissa: General; Ibid, 667.
22. Madras: General; Id., 666-67.
23. 1995 Supp. (4) SCC 469.
24. Ibid, para 18.
25. AIR 1982 SC 1473.
26. AIR 1993 SC 1126.
27. AIR 1995 SC 1198.
28. AIR 2004 SC 1672.
29. AIR 2010 SC 1738.
30. 2011 (1) SCC 793.
31. 2012 (8) SCC 795.
32. Ibid, para 9 & 10.
33. (2014) 3 SCC 471.

34. (2017) 13 SCC 439.
35. Ibid, para 12.
36. (2018) 6 SCC 454.
37. Ibid, para 82 & 83.
38. (2020) 4 SCC 761.
39. Ibid, para 66 & 67.
40. (2020) 4 SCC 727.
41. Ibid, para 8-11.
42. Decided on 5th November, 2020 by the full bench of the Supreme Court of India.
43. Ibid, para 10 & 13.