
Presentation On Law and Social Changes

Cast System and Social
Reform in India

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Introduction:

The main feature of human society is to make differences in social status of the persons and also to create various groups in the same society. Such kind of differences is made either according to birth or by the livelihood of the persons. In Indian society cast system plays a vital role. Here I want to give some lights to the position of cast system in the Indian society. This is a very relevant topic for the social reforms by legal developments. Cast system is not only an evil of the ancient society but till today it is going on. It is also true that without the abolition of the cast system from our society, any kind of social development is impossible.

I have divided my presentation in four parts. At first the issue of my presentation, then there will be a short idea about the stand of ancient Indian society regarding the cast system. The next head is the position of Indian Constitution dealing with this problem and at last the present position of India.

Issue:

My issue for the presentation is the impact of cast system in Indian society and the proposition made to eradicate such impact.

Cast system and the ancient Indian society:

In India many cultures flourished in the past. Among them the Indo-Aryan culture is not only the earliest culture which contains the cast system but also gives a continuous history of such system. In the Indo-Aryan society the basis of making differences the 'colour' or 'Varna'. The Indo-Aryans most probably come from the Harappa and Mohenjo-Daro area. They have fair colour or complexion. On the other hand the native of the India are of dark complexion. The Indo-Aryan started to treat the native Indians as their 'Das' or servant. Such 'Das' are treated as the lowest class of the society. All of these differences were done mainly for their 'colour'. Their position in society was very bad, even the Indo-Aryan males started to exploit the female 'Das' to satisfy their sexual desires. But, on the other side marriage between female Indo-Aryan and a male 'Das' was strictly prohibited.¹

At the time of Brahmanism civilisation the Indian society was divided in four parts, that is Brahman, Kshatriya, Vishya and Sudra. Brahmans were the highest class and the Sudras were the lowest cast of the society. Cast system was so strict at that time that privileges and disabilities were given according to ones class in the society. Sudras were residing outside of the villages. They had no right to worship. Marriage between Sudra and any other rest three classes were strictly prohibited. According to the great grammarian Patanjali, Brahmans had a

¹ G.S Ghurye, Cast and Race in India, chapter: origin of cast system, Popular Prakashani, pp-163-181.

great physical structure. They had fair skin and tawny hair. Such physical structure was a thing of great pride to them. It helped them to hold a dominant position in the society. That is why the main aim of cast system was to prohibit inter cast marriages. Brahmans not only made rules of conduct of themselves only but also for the rest of the society. Priest craft was the monopoly occupation of the Brahmans.²

The position of the Sudras in the society can easily be traced in the writing of B.R Ambedkar³. While giving a theory in respect of Sudras, he says that Sudras were a part of the Aryan community. They were in the Kshatriya Varna in the Indo-Aryan society. At the very beginning the Indo-Aryan society recognised only three Varna in the society, Brahmans, Kshatriya and Vaishya. There was a continuous conflict between the Brahman and the Sudra kings due to many tyrannies suffered by the Brahmans. As a result of such hatred towards the Sudras, Brahmans refused to give them the right to wear the sacred thread, which is called Upanayana. This right was considered as one of the most important right as it gave the right to learn the Veda. After losing such right, the Sudras became the fourth class of the society. Their right to property, knowledge and many more privileges were gone. It compelled them to look at the rest three classes as their supervisor and the higher classes started to treat them as their inferior.

The Dharmashastras used to as personal law, before the codified statutes came into force. Such Dharmashastras were also recognised four Varnas in the society. Different rules were given for different Varnas. Marriage, adaption was totally prohibited between different Varnas or classes. As rules are different for different classes, so it was a task of the Court to make a list of the different rules on the basis of which person could be recognised as member of that particular class⁴.

Another unique feature of the Hindu caste system is 'Untouchability'. As per the Courts decision there should be a continuous process to treat some class as untouchable, and then only they treated as untouchables. So, a continuation of such process should be there. Mere avoidance to some classes does not held them as untouchables. To determine untouchables the court mainly looked into the ritual standing of that particular class, but the social and economic standing were also taken into consideration.

The caste system was so rigid that the lower class had a separate way to enter in a temple. Even in most of the temples they had no right to enter. If they entered it would be treated as a criminal offence. He had to give damages for that. There was also purification ceremony in the temples, as the lower class were treated as polluting the temple. They had no right to take

² G.S Ghurye, Cast and Race in India, chapter: origin of cast system, Popular Prakashani, pp-163-181.

³ Ambedkar on Indian History, THP Chentharassery, Rawat Publication.

⁴ Marc Galanter, Structure and Change in Indian Society, chapter: Changing Legal Concept of Caste, pp-302

bath from the common tank; they could not take the drinking water also from the same place⁵.

Caste was treated as a separate legal identity. It had the right to sue and to be sued. Though the Court had some jurisdiction in caste related matter, but it was really limited. The caste could make and amend the rules regulating the internal cast problems. But the Court could interfere with the decision of the caste tribunal if the decision had not been taken with some evil motive or decision had taken under misconception or it was contrary to the rules and usages of the particular cast and lastly if it did not follow the rule of natural justice.

Indian Constitution and the caste system:

The Constitution of India plays a vital role in regulating the caste system in the Indian society. In one hand it tries its best to eliminate the inequalities on the basis of caste from the Indian society. But on the other hand it is quite unclear about the legal position with respect to the caste groups in Indian social life. As we know that under article 19, 25, 26, 29 and 30 of the Indian Constitution say about the constitutional protection of the religious groupings and voluntary organisations. But under Article 15(1), 15(2), 16(2), 17, 23, 29(2) the Constitution says abolition of discrimination on the basis of cast. So the relationship of the legal system and the caste system is really very important in India. Caste system is nothing but some interests of the influential groups of the Indian society. On the other hand law is the one and only powerful method of check and balance of notions about the various religious groups of the Indian society⁶.

In the Hindu Code Acts of 1955-56 great emphasis is given to a uniform law for Hindus of all region and castes. The limitations in case of marriage, adaption between different castes and Varnas are eliminated. Varna has virtually been eliminated as an operative legal concept. But for caste tribunals, again “caste customs” are treated as vital evidence. Where caste is treated as a relevant to the operation of personal law, it can override the Hindu Code Acts.

The preamble of the Constitution of India says about the equality of status and opportunity of the people. Now it has become a fundamental right of the citizens that there should not be any discrimination on the basis of race, sex, cast etc. Article 15(2) of the Constitution says that there should not be any discrimination to the use of public place, water tank, restaurants, shops etc. Article 17 says about the abolition of untouchability. The introduction of the Untouchability (offence) Act 1955 is an important step to remove all kind of disabilities on the basis of caste system. Under this Act any discriminatory act on the basis of untouchability will be treated as a punishable offence. There is also The Schedule Caste and Schedule Tribes (Prevention of Atrocities) Act 1989 to eliminate the evil effect of cast system from our society.

⁵ Marc Galanter, Structure and Change in Indian Society, chapter: Changing Legal Concept of Caste,

⁶ Marc Galanter, Structure and Change in Indian Society, chapter: Changing Legal Concept of Caste,

Protective discrimination

The matter of reservation on the basis of caste came before the Supreme Court for the first time in *State of Madras v. Champkam Dorairajan*⁷, where the Government reserved the seats of a medical college on the basis of caste and the Supreme Court rejected that reservation saying that it is violating Article 15(1) of the Constitution. So Article 15(1) was coming in the way to make special provision for the socially and educationally backward persons. To overcome this situation Article 15(4) was inserted in to the Constitution of India. It says that State is not prevented to make any special provisions for the advancement of any socially and educationally backward classes of citizens or for the schedule caste or the schedule tribes. But Article 15(4) only confers a discretionary power and does not provide any constitutional mandate. So no mandamus can be issued on the basis of this Article⁸. But problem arises in defining “socially and educationally backward persons” under this Article. This particular Article does not give any criteria to determine. So the power is given to the States to determine this thing. But the court can interfere with such determination to verify the criteria taken by the States. From several judicial interpretations we can sum up the criteria to determine the “socially and educationally backward class” in the following manner:

Firstly, the backward class under Article 15(4) should be both socially and educationally backward. Failure to satisfy any of these two will not regard that class as backward class within this Article.

Secondly, poverty alone can be the criteria to determine the backwardness of any class.

Thirdly, backwardness should be comparable with the schedule caste and schedule tribe.

Fourthly, caste may be a relevant factor to determine the backwardness but cannot be the sole factor.

Fifthly, poverty, occupation, habitation, place of birth plays a vital role.

Sixthly, though cast may be a relevant factor to determine backwardness. But the Supreme Court while interpreting Article 15(4) says that this particular Article says about the class not about the caste. If at the time of the determination of the backwardness the caste is ignored and other criterion are satisfied, then such determination will be treated as relevant. Cast is not equivalent to the class⁹.

We can find the definition of schedule caste and schedule tribe under Article 366(24). Article 341(1) says that the President can by public notification declare any race or caste as schedule caste or schedule tribe.

⁷ AIR 1951 SC 226 : 1951 SCR 525

⁸ *Union of India v. R. Rajeshwaran*, (2003) 9 SC 294: (2001) 10 JT 135 in M P Jain, *Indian Constitutional Law*, 6th Edi 2010, LexisNexis Butterworths Wadha Nagpur.

⁹ M P Jain, *Indian Constitutional Law*, 6th Edi 2010, LexisNexis Butterworths Wadha Nagpur, pp- 999

Reservation for schedule caste and schedule tribe in Lok Sabha can find under Article 330 of the Constitution. In any Municipal Corporation reservation for the schedule caste and schedule tribe can be made under Article 243-T.

Reservation for schedule caste and schedule tribe was made in the Constitution after the independence. But the reservation for the backward class is done only after the famous case that is Indra Sawhney v. Union of India,¹⁰ which is also known as Mandal Case. The majority decisions of this case are as follows:

1. The court departs from its previous position and says that caste rather than class is the main factor to determine the backwardness.
2. 27% reservation is to be given to the other backward class after excluding the “creamy layer”.
3. OBCs are to be divided in “backward” and “more backward” then respective quotas should be given.
4. Court rejects Government’s recommendation of 10% reservation for the poor of the forward classes.
5. 50% ceiling on reservation is retained by the court.
6. No reservation for promotions.
7. Where professional techniques are considered as a vital point for example pilots, physician, and military there should not be any reservation.
8. Order has been given by the court to established permanent commissions to look after whether a particular caste is correctly included or excluded as a backward class or not¹¹.

In 1993 several steps were taken to implement the Sawhney decision. National Commission for the Backward Classes was established. Such step was no doubt one of the most important steps taken for the betterment of the backward class peoples. Reservation for the “Other Backward Classes” was given effect. In doing so, “creamy layer” was also defined.

The Constitution of India says about a caste less society. It is also true that in some Articles it says about the preservation of the religion and the linguistic religious groups. But there is a clear discourage by the court to use caste as an important factor in the Indian society. Court discourages the caste as a legal identity; appeal to caste loyalty at the time of electoral campaign is totally prohibited, promotion of enmity between two caste groups is also prohibited. It is true that the caste groups hold some right to their inner management, but such rights are limited in nature. The court puts restriction on such rights.

Present position in India:

In this part I have restricted my discussion in the periodical report given by India under the International Convention on the Elimination of All Form of Racial Discrimination

¹⁰ 1993 AIR, (SC) 477.

¹¹ George H. Gadbois, Jr, Mandal and Other Backward Classes: Affirmative Action in India in The 1990s, U.S.F Journal of Law & Social Changes, 1997, www.heinonline.org.

(ICERD)¹². According to this report, 167 million Indians are continuously discriminating on the basis of caste system till today. The practice of “untouchability” which is known as schedule caste and schedule tribe is also continuing. They prejudice in every sphere of life.

The National Human Rights Commission, which is considered as the apex institution for taking care of the position of human rights in the country, says that the custodial torture on the Dalits, rape of Dalit women in custody, looting property of the Dalits are still growing. For all these kind of activities, the policy taken by the police is “ignorance”. Various legislations are adopted to prevent such types of torture on the Dalits; they have not been implemented properly.

Dalits are also discriminated at the time of giving aid. It has been observed at the time of Tsunami and the earthquake at Gujrat that they do not get proper aid also only for their caste. According to this report India is also failed to remove the barriers between the Dalits and the so called upper castes. Till today their colony and school are segregated.

It is true that the Government has initiated some reservation policies for the Dalits, but it is also not properly implemented. Some sectors such as judiciary, military are outside these reservation policies. Most of all, a huge agitation has started for such reservation system in the general mass.

The conditions of the Dalit women are really very vulnerable. They have no equal access to employment; they have limited job opportunity, they are also denied from giving access to justice, in some places “devadasi system” is prevailing till today. The condition of the Dalits in the villages is beyond imagination. The practice of “untouchability” is going on in such villages in full fledge.

The position of the civil, political, economic, social and cultural rights of the Dalits is also worse. Right to treat equally before tribunal or other judicial bodies are violated as judges or police fail to hear the cases of the Dalits properly. Most of the cases are either pending or the offender get acquittal.

The increasing rates of looting, sexual assault, other inhuman activities are the evidence of the violation of their right to security of person and protection of bodily harm. Right to give vote or to stand for vote is also denied by the upper classes by both-rigging or both captures. Their right to join trade union and freedom of expression are curtailed manly by the police. They have no right to marry according to their own choice; marriage to any upper-class will be a threat to their life. Education, which is the one and only means to eradicate the evils of caste system from our society, is also denied to the Dalits. They are mostly enrolled in Government schools, with poor infrastructure; they are segregated by the upper-caste students as well as by the teachers.

¹²Caste Discrimination Against Dalits Or So-called Untouchables in India, presented by Centre For Human Rights And Global Justice with Human Right Watch, February 2007.

Conclusion:

The position of the Dalits in India is really sorrowful. According to my opinion the following may be the best suggestions for this problem:

1. Proper education for all.
2. Anti discriminatory campaign throughout the nation.
3. Anti discriminatory lessons in school level books.
4. Media should also play a vital role on this regard.

Only reservation is not enough for this problem. On the other hand reservation by sacrificing the merit pool of the country is a threat to the educational standard of our country.

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Online resources

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