

ARTICLE 17 AND THE EXPANSIVE INTERPRETATION OF “UNTOUCHABILITY”

Shivanshika Samaddar*

INTRODUCTION

India is said to be a country of diverse culture, with people coming from all walks of life, and seemingly living together under the umbrella of the laws and rights which are given to the citizens under the Constitution of India itself. The country confers upon its people numerous fundamental rights, and vows to protect those fundamental rights to the best of its abilities, and yet even after almost 75 years of independence, the country still struggles to dictate as to who and what can be deemed untouchable. Now, this very statement brings upon us two questions, questions which I do not promise to find answers to but to aim towards tracing all that has been brought under the ambit of untouchability and where we stand today as a country.

The two questions at the moment are that of caste and sex, and that of their history, the present, and the way forward. Untouchability and the discrimination that comes along with it is the grassroots of the systemic oppression so many in the country have faced for years now. The very belief that someone in a higher authority can choose to deem someone else as an ‘untouchable’ and take away a certain set of rights and liberties reflects a lot upon how the society and privilege functions, and for the sake of restoring a structure of equality, [Article 17 of the Constitution](#) abolishes untouchability on papers. This Article is a fundamental right and has been a major force of change in the country, and a step further to condone the discriminatory practices prevalent in the society, yet the very essence and scope of the provision keep getting questioned time and time again, and it is upon the courts to decide how this attempt to eradicate oppression shall move forward, or will it move forward at all.

THE HISTORY OF ARTICLE 17

Article 17 of the Indian constitution states *that untouchability is abolished and its practice in any form is forbidden*. In 1950, the government of India took a step forward and made a historic change to move the country towards an equal world. The very essence of this

*BA LLB, FIRST YEAR, NATIONAL LAW UNIVERSITY, DELHI.

provision was to abolish any systemic oppression which was caused due to caste discrimination, and the Constitution-makers wished that along with an independent nation, the people too would choose to be independent of these orthodox inhibitions and prejudices that had for long corrupted the society. This article does not define the term ‘untouchability’ which was a strategic move by the makers of the constitution to ensure that any kind of further oppression, in whatever form or face as it may occur can be singled out and be rectified, as narrowing the scope of this article would have defeated the purpose of trying to build an equal society.

The context as to when this provision was enacted is vital because the Constitution came into being at a time of social unrest and political tensions. India had just become independent, the country had broken apart due to partition very recently, and the people were yet to understand their own identities. The citizens were trying to fathom all the destruction and uproot of culture as they crossed the borders from either side, those who had spent generations subjugated by the British now had to run a nation on their own.

Mahatma Gandhi, the father of the nation was wholeheartedly putting for the concept of Harijans and trying to propagate the idea that discrimination was not to be followed anymore. B.R. Ambedkar as well as doing the same and working to eradicate any form of caste discrimination that existed.

At the same time, as it was a situation of political tension and people were moving from one side of the border to the other, a border that had been created based on religion itself. Hindus, Muslims, and Sikhs were at each other's throats. At the same time, the inherent nature of the patriarchal society had reduced women to the concept of property, and women were now seen as an asset, a metric on which men judged each other's prestige.

This was the context under which Article 17 was introduced, and we shall now see that in the last 75 years, how much has changed, or not.

CASTE DISCRIMINATION

Before moving onto the development in the abolishment of untouchability concerning the caste system, a general understanding of what caste is and how it works is very important, to realize the gravity of the issue. The society under this system is broadly divided into five sections, namely the Brahmins (the teachers, scholars, and the priests), the Kshatriya (the

rulers, warriors, and the administrators), the Vaishyas, the Shudras, and the Panchamas (the outcastes). It is perceived to be a hierarchical structure, where the Shudras are at the lowest rung and the Brahmans are put on a pedestal of being the most learned and are at the highest rung. In the pre-colonized times, the flexibility and movement through these different castes were a lot easier and fairly common, but it was after the colonization of India by the British that this system solidified and took the form it has today.

During this solidification, the lives of all those who were deemed 'lower castes' according to this structure, faced numerous prejudices and were oppressed to the point where they would be called untouchables. Their existence in a social space was looked down upon, and their engagement with anyone from the upper caste was penalized informally.

That was the India the constitution makers had when they drafted the Constitution, but major changes since they have landed the caste system in a very different place. Caste discrimination has become a highly politicized and conflicted topic. The worst end of this issue has always been faced by those who were deemed 'untouchable' and the government has taken various steps to make sure that this discrimination does not ensue.

Reservations, even though a conflicting claim in the country, were introduced to further promote the upliftment of the backward castes and classes. Reservations have been provided for those who fall under the category of Scheduled Castes, Scheduled Tribes, and Other Backward Classes, and a certain number of seats or space is restricted for them to avail. This process has led, to a major extent, to the development of these sections of the society, and it ensures representation of people from disadvantaged communities in places of authority and the general public to provide an equitable society.

Article 17 of the constitution is further strengthened by the [Protection of Civil Rights Act, 1955](#) which was formerly known as the Untouchability Offences Act. This Act, along with Article 35 of the Constitution and various non-profit organizations and unions that have come up over time have done remarkable changes in the field of untouchability concerning caste discrimination.

Post-independence, the law, and the lawmakers spent a lot of effort and time to undo the stringent caste rules the British rule had imposed. Even though we have made considerable progress, but to say that caste discrimination has been controlled, much less eradicated would be a far-away dream. To this day, caste-based oppression is rampant in not just the rural but

also the urban areas. Representation of disadvantaged communities has increased exponentially, but it still does no justice to the thousands of voices that go unnoticed in the country. If one was to compare the difference between caste-based oppression during the British rule and that of the current times, one could say that we have come a long way from the stringent and ruthless behaviour of the oppressing castes then, but to state that the current situation is ideal for the oppressed is also a far-fetched truth. Yes, a lot of people from these communities are now holding major places of authority, but yet they face enough atrocities while climbing that ladder to feel the inherent discrimination present in the mindset of the society.

Are we in a better and equitable society? In a lot of cases yes, there is more representation but is there more acceptance? That is a question we are yet to find the answer to, because of the major divide between the rich and the poor, and the consequences that come with having to carry a tag of a caste you had no other option than to be born into.

GENDER-BASED DISCRIMINATION

As already mentioned above, Article 17 does not limit its ambit to just caste discrimination. Talking about the infamous [Sabrimala Case](#), which is considered a giant leap towards breaking taboos against women of the menstruating age, it led to an equitable place for women to not feel boycotted due to a process they barely have any control over. For years, women have been prohibited to enter the temple of Sabrimala in Kerala. It was deemed that women were impure and hence could not be allowed to enter the temple as it would be a dishonour to the deity.

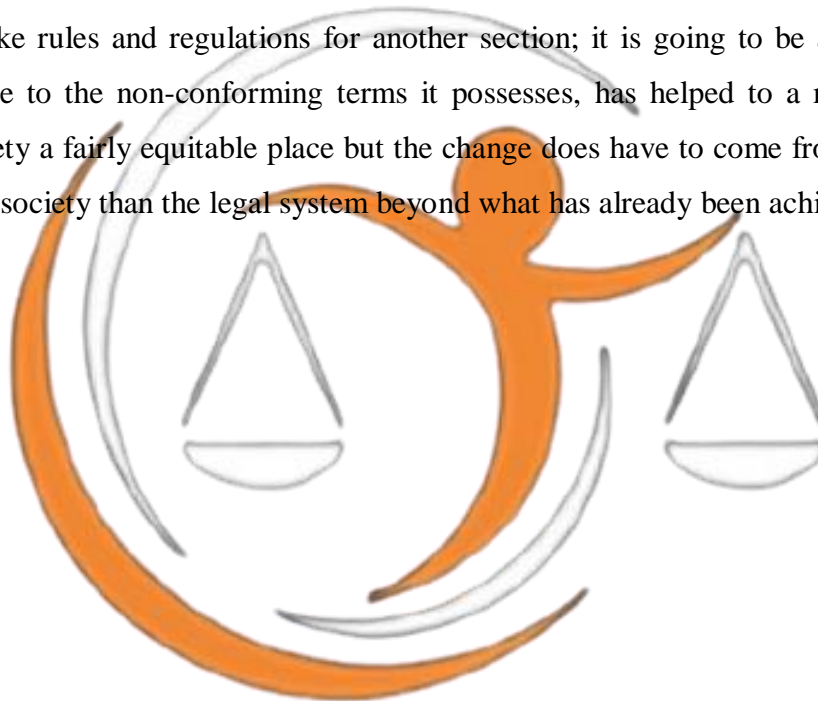
This too stems from the idea of a minority trying to oppress and dictate the existence of a disadvantaged majority. As this country is majorly patriarchal, the society has, for long dealt with a constant tug of war between women wanting to assert their rights and fighting the male-dominated society. The judgement of the Sabrimala case changed the narrative, and the judiciary put forth a message that:

- a) It is completely natural for a woman to menstruate, and it is a violation of basic human rights to not allow them into a place of religious worship just based on a natural process to which they do not contribute to.
- b) It is not only discriminatory but also further strengthens the idea that men get to decide the conduct of women

- c) It sets down a precedent that equality is the basis of a society, and for a certain community or section to feel that they have a major hold over the lifestyle of another, is inherently wrong.

CONCLUSION

Now, we have addressed what the issues with society are at the current moment, but to ascertain that these small steps have brought about a revolutionary change is very difficult. Even though the country has made significant changes concerning untouchability and the various kinds of the same, but society has not reached the level it should have yet. We are making progress, but the stigma is so deeply rooted in the mindset of the people, along with it being highly encouraged in the society to the point where a section of the society feels entitled to make rules and regulations for another section; it is going to be a long journey. Article 17, due to the non-conforming terms it possesses, has helped to a major extent to make the society a fairly equitable place but the change does have to come from the inherent outlook of the society than the legal system beyond what has already been achieved.



REFERENCES

- GURU, G. (2009). Archaeology of Untouchability. *Economic and Political Weekly*, 44(37), 49-56. Retrieved February 12, 2021, from <http://www.jstor.org/stable/25663543>
- Shah, A. (2007). Purity, Impurity, Untouchability: Then and Now. *Sociological Bulletin*, 56(3), 355-368. Retrieved February 12, 2021, from <http://www.jstor.org/stable/23620634>
- Biswas, S. (2018). Gandhi's Approach to Caste and Untouchability: A Reappraisal. *Social Scientist*, 46(9-10 (544-545)), 71-90. doi:10.2307/26611325
- <https://samistilegal.in/article-17-of-the-constitution/>
- Abhishek Mittal, *A Brief History of the Caste System and Untouchability in India*, THE LOGICAL INDIAN, <https://thelogicalindian.com/story-feed/awareness/caste-system-and-untouchability-in-india/>

