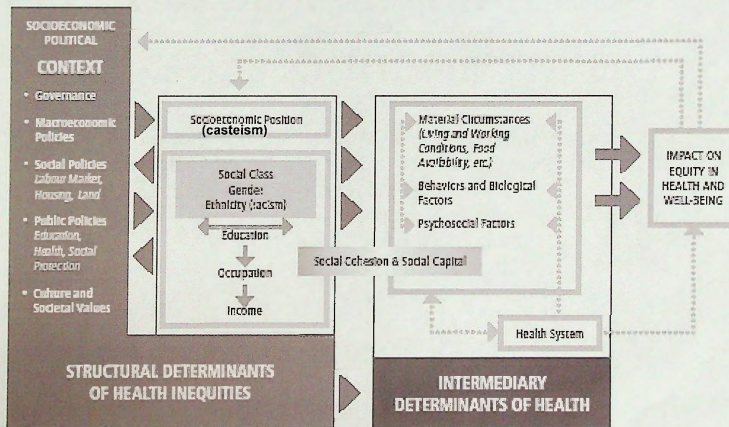


Casteism: A Social Determinant of Health

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Figure 2. Conceptual framework of the social determinants of health



Source: Sobel and Irwin, 2010

What is casteism?

Discrimination of one human being by another based upon ones 'caste'

How it is different than racism?

- Castism is between individuals who are:
 - From the SAME RACE
 - Has physical similarities (hair & skin color etc)
 - Speak similar/same language
 - Dress up similarly
 - Eat similar food (when available)
 - Enjoy similar festivals & seasons (when \$\$)
 - Pray similar/same gods!!!

Magnitude of Casteism problem?

- > 250 million Scheduled Caste/Scheduled Tribe (SC/ST) people in India alone (from the so called 'lowest of the low caste')
- Pakistan
- Nepal
- Bangladesh
- Sri Lanka
- Japan
- ...even in UK, USA, Canada, Australia, New Zealand etc. with migration of population

Equality Act 2010 in UK

Included caste as a protected characteristic against which discrimination can not be done and thus bans unfair treatment

Evidence of casteism as an important SDH?

- 2010 - National Institute of Economic and Social Research (a study commissioned by the Government Equalities Office, UK)
 - identified that caste discrimination and harassment was by higher castes against the lowest castes in UK
 - caste discrimination is not religion specific and is subscribed to by (and affects) members of any or no religion
 - Hence, Equality Act 2010 provisions on religious discrimination cannot cover caste discrimination and harassment as effectively as caste-specific provisions would

More evidence....

- SEWA: (Self-Employed Women's Association working for the poor)
 - Membership in India +++SC/ST
 - Latest study findings:
 - SC - almost twice as likely to have income decline in the past year where as Hindus (upper-caste Hindus in particular) reported increase in income
 - SC - four times as likely as those from upper castes to expect fall in their income in the coming year....insecurity

More evidence...

- Half of all 500,000 maternal deaths per year occur in South and South-East Asia...who are these mothers?
- Countries in the Indian sub-continent contribute two thirds of the global burden of malnutrition.....who are these people?

More evidence....

- Preventable diseases like blindness, TB, disability more common in SC/ST

Ed

SOS-5

HUMAN RIGHTS EDUCATION SERIES - I



"UNTOUCHABILITY AND ATROCITIES"

**RIGHTS AND REMEDIES UNDER
LAW**

Prepared by

N.R. MADHAVA MENON

Published in Public Service by

**LEGAL SERVICES CLINIC
NATIONAL LAW SCHOOL OF INDIA UNIVERSITY
BANGALORE - 560 001.**

1.7

**"ALL HUMAN BEINGS
ARE BORN FREE AND EQUAL
IN DIGNITY AND RIGHTS"**

ARTICLE I, UNIVERSAL DECLARATION OF HUMAN RIGHTS

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About the National Law School of India

The Legal Services Clinic at NLSIU

PREFACE

It is perhaps unnecessary to have a preface for a small booklet. The introduction which follows does explain the importance of the subject and the objects with which National Law School of India University has undertaken the publication. Nevertheless, being the first attempt in a series intended to bring law to the people and promote a new legal culture towards the social revolution promised by the Constitution of India, it may not be out of place to share some thoughts through this prefatory note on what we hope to accomplish by this exercise.

Universities are admittedly centres of scholarship and learning. Are they also institutions for service and change? Can they be instruments for accelerated social development, instruments for fighting injustice, poverty and ignorance? Contemporary opinion seems to be that they can be and they ought to be. However, there are no clear-cut policies and models yet for achieving this goal except what is canvassed through the extension and continuing education programmes as well as the National Service Scheme. Agricultural Universities opened up new possibilities in this direction during 1960s and '70s. The "Lab to Land" experiment is another development of the 1980s. Institutions of legal education, of which we have more than 360 in India, have been largely out of such experiments till 1980 when the Committee for Implementing Legal Aid Schemes (CILAS) tried, with modest success, to draft Law schools in the scheme of legal aid to the poor. Today, after a decade-long effort, CILAS could not involve more than a score of law colleges in the exciting experiment of "legal aid" in "legal education". It is a matter of surprise to find that law schools have not bought the idea despite the immense potential the experiment offers for practical education of the law students.

When the National Law School of India was set up in 1987 at the instance of the Bar Council of India as the first Law University in the country, it was envisaged that it would act as a pace-setter in reforms in legal education and would provide the impetus, the know-how and the leadership for re-structuring the system. As if to facilitate this role of NLSIU, the University Grants Commission recognised National Law School as one of the two Universities in India to give training and refresher courses for law teachers under its Academic Staff College programme. The Law School seized the opportunity and undertook a variety of programme creating new hopes and possibilities not only for education for the profession of law but also for public legal education. One such programme of public legal education is the simplification and dissemination of law relevant to protect Human Rights particularly of the weaker sections of people. This booklet is the first publication in this series being released on the Human Rights Day. The booklet is being brought out in different languages to facilitate easier access to the persons intended.

Mere publication of relevant law in simple language will not be sufficient to serve the cause of public legal education. As such, the University has simultaneously launched a programme of Para-legal training through which comprehensive under-

standing of the law and legal processes is imparted to social activists and others working with the people at the grass root level. In the process, the University is also building bridges with the community in general and between the community and the legal aid apparatus in particular.

The National Law School will be happy to collaborate with other educational institutions as well as with social service organizations for developing the strategy of service with education, an aspect long neglected in our developmental policies and approaches.

This booklet is published out of the financial assistance extended to the Legal Services Clinic of NLSIU by the Committee for Implementing Legal Aid Schemes, Government of India and the Karnataka Legal Aid Board. We express our thanks for the support. We do not put a price on these publications. However, organizations ordering copies may like to make a contribution towards the costs which would help production of more such booklets for public legal education. Copies can be had from the Convenor, Legal Services Clinic, National Law School of India, Central College Campus, Bangalore-560 001 by writing the number of copies required and enclosing a contribution by way of a bank draft in favour of the National Law School of India University, Bangalore. (The cost of production is roughly Rs. 4 per copy)

The next publication under preparation in this series is a pamphlet on the "Citizen and the Police". This will be followed by subjects such as Rights of Children, Women's Rights and legal protection of handicapped persons.

Bangalore

10 December, 1989

Dr. N.R. Madhava Menon

Director

National Law School of India

INTRODUCTION

Undoubtedly, the practice of untouchability and the perpetration of atrocities against the most disadvantaged sections of Indian Society, the Scheduled Castes and Tribes, are continuing threats to human dignity and national integrity solemnly promised by the Constitution of the Republic forty years ago. Today, according to official statistics and newspaper reports, these inhuman practices have increased and have assumed various dimensions atleast in some parts of the country.

There can be many historical, sociological and political explanations to this development which, some persons argue, is a temporary phase in social change best contained through persuasion, education and economic amelioration of the status of the target groups. However, in view of the obnoxious nature of the practice of untouchability and the degree of wickedness involved in the atrocities against the weaker sections, the constitution and the Laws have adopted the strategy of fighting the evil through the criminal process with all the might the State could command. This strategy has led to the adoption of two important social legislations, namely, "THE PROTECTION OF CIVIL RIGHTS ACT, 1976" (earlier known as the Untouchability Offences Act, 1955) and "THE SCHEDULED CASTES AND THE SCHEDULED TRIBES (Prevention of Atrocities) ACT, 1989". Together with the provisions of the Constitution, these two laws form the bulwark of human dignity and social justice so far as the erstwhile "untouchables" are concerned.

Laws are not self-executing. They need an institutional apparatus and human beings acting as administrators, policemen, prosecutors, judges, social activists and media persons. The performance of the law is dependent upon the level of awareness and the degree of motivation these actors of the legal system possess at any given point of time. Legal effectiveness is also conditioned in a democracy by the force of public opinion and the initiative of the victims themselves in seeking protection of the law. Access to justice under our system is available only to those who are willing to assert their rights under law. Those who do the contrary and suffer injustice silently are not only discrediting themselves but also inflicting serious injury to rule of law and human rights which are proud possessions of the Indian Republic.

Human Rights education and social mobilisation for legal action against human rights violations are therefore the best guarantee for Constitutional democracy and Rule of Law. Public legal education supported by free legal aid to the poor is an imperative necessity particularly in a situation where the majority of people are poor and illiterate, culturally conditioned to live a life of submission and fatalism. The Legal Services Clinic (LSC) of the National Law School of India University (NLSIU), Bangalore has taken up an ambitious project on Human Rights Education to be accomplished in association with other interested agencies in government and outside firstly, through simplification of laws for popular consumption and secondly, disseminating legal knowledge through all available means of mass communication.

The LSC of NLSIU is bringing out the first issue of its Human Rights Education series on civil rights protection and atrocities prevention as it considers the twin evils as the most reprehensible practices in modern India. The booklet is prepared keeping in view the minimum needs of information of the consumers of Justice, though, it is also intended to educate the functionaries of the legal system of their duties and responsibilities under law. It is hoped that the legal awareness of the people, the constant vigilance of public spirited citizens and the dynamism of legal aid personnel would in the near future make a decisive change in the administration of the two social legislations discussed below to the advantage of the so-called "untouchables" and to the strengthening of Indian democracy.

BENEFICIARIES OF THE LAW; SCHEDULED CASTES AND SCHEDULED TRIBES:

The legislations discussed here are intended to protect the people at the bottom of the caste hierarchies of Hindu Society who have the lowest ritual standing, the lowest economic position and the heaviest social disabilities. They are traditionally regarded as "untouchables" who suffered systematic degradation and victimisation, sometimes worse than slavery. Gandhiji referred to them as Harijans (Children of God). Dalits, depressed classes and weaker sections are other expressions commonly used to identify the target people. Although untouchables might readily be identified in a given locality, considerable difficulty exists in developing an all-India standard to distinguish them. Overlapping both caste and religious groupings and suffering the same social disabilities and oppression are some tribal communities concentrated in isolated mountainous regions of the country. Modern legal terminology to identify these groups is the expression "Scheduled Castes and Scheduled Tribes" or, in short, S.Cs and S.Ts.

The Scheduled Caste category is intended to comprise of those who were treated as "untouchables" and were put to such disabilities as denial of access to public facilities and services, exclusion from respectable professions and profitable occupations, residential segregation, restrictions on movement etc. Early in the century, Hindu Social reformers started a movement to remove such disabilities and bring the depressed classes into the mainstream of national life. The groups belonging to this category were first listed (i.e. scheduled) in 1936 for purposes of giving effect to the provisions for special electoral representation in the Government of India Act, 1935. At the time of Independence, these groups contained over 50 million persons and nearly 20% of the Hindu population.

The makers of the Indian Constitution also continued the same formula for identifying the so-called untouchable or depressed classes. Article 341 (1) of the Constitution says that "the President may with respect to any State or Union Territory, after consultation with the Governor thereof, by public notification, specify the castes, races or tribes which shall for purposes of this Constitution be deemed to be Scheduled Castes in relation to that State or Union Territory". Similarly, Article 342(1) provides the procedure for listing tribal communities as Scheduled Tribes in relation to a State or Union Territory. Conventionally the selection of Scheduled Castes for

purposes of inclusion in the list was based on "untouchability", measured by the degree of incidence of social disabilities. Of late, this basic criterion has been combined in varying degrees with occupational, educational, economic and religious tests.

The beneficiaries of the law under review are those who are designated under the Constitution as Scheduled Castes and Scheduled Tribes irrespective of the fact whether in a given locality they do or do not suffer one or more of the disabilities which persuaded the State (Parliament) to adopt a protective discrimination policy in their favour. This fact is important to remember particularly by law enforcement personnel as otherwise the purpose of the law stands the risk of being defeated by extraneous considerations (such as higher economic status of the victim) diluting enforcement of the law. An "untouchable" shall not cease to be an "untouchable" for the purposes of the law if he resides in any locality other than the place mentioned in relation to him under the Constitution (Scheduled Castes) Order, 1950 or if he improves his status economically or otherwise.

CONSTITUTIONAL FOUNDATIONS AND IMPORTANCE OF ANTI-UNTOUCHABILITY LAW

There are very few practices which the Constitution itself declares as crimes and among those few, untouchability is one. Article 17 declares: "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". This Article forms part of Fundamental Rights which the State cannot abridge or alter except in accordance with the Constitution itself.

It is in pursuance of this provision of the Constitution, the Protection of Civil Rights Act was passed to prescribe punishment for the preaching and practice of untouchability. The importance of the law therefore is obvious.

Furthermore, in Article 46, the Constitution directs the State in particular "to protect the Scheduled Castes and Scheduled Tribes from social injustice and all forms of exploitation". Again, Article 338 directs the President to appoint a Special Officer for S.Cs. and S.Ts. to investigate periodically the working of safeguards in favour of S.Cs and S.Ts for suitable action by Parliament. The reservation policy adopted by the Constitution is just one strategy for ameliorating the conditions of the "untouchables". More importantly, the Protection of Civil Rights Act and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act are Constitutionally important in terms of the Preambular promise of social justice and individual dignity. Hence these two laws could as well be deemed to be part of the Constitution in terms of its authority and significance. In other words, they are not like other social legislations which the Executive Government may decide to enforce according to expediency and availability of resources. No Government, Central, State or local can neglect or compromise the enforcement of these seminal laws if they care for the Constitution.

OFFENCES UNDER THE PROTECTION OF CIVIL RIGHTS ACT (PCRA):

What are "civil rights"? PCRA defines civil rights as those accruing to a person by reason of the abolition of untouchability by the Constitution. The consequence of abolition of untouchability is the redemption of equal rights for all as guaranteed by Article 14 of the Constitution. Disabilities have been replaced by rights and the conduct of those who continued to enforce disabilities has been converted into offences under PCRA. The major offences under PCRA and the punishments prescribed therefor are as follows:

- (a) **Enforcing religious disabilities:** Preventing any person from entering any place of public worship or from offering prayers or using the waters (on the ground of untouchability) is punishable with imprisonment between one month and six months and fine between 100 and 500 rupees (Section 3);
- (b) **Enforcing social disabilities:** Enforcing disability (on the ground of untouchability) with regard to access to shop, hotel or places of public entertainment, or the use of articles kept therein for public use, or the access to or use of any public conveyance, public residential premises and public conveniences etc. is punishable with same terms of imprisonment and fine as above. Enforcing any disability includes any discrimination on the ground of untouchability (Section 4);
- (c) **Refusing to admit persons to hospitals:** Refusal of public hospital facilities and discrimination after admission (on the ground of untouchability) are also punishable with the same punishments as above (Section 5);
- (d) **Refusing to sell goods or render services:** If on ground of untouchability any one refuses to sell any goods or refuses to render any service available to other persons in the ordinary course of business are also offences punishable as above (Section 6);
- (e) **Insulting, abusing and obstructing behaviour:** Acts directed towards preventing persons from enjoying civil rights, or boycotting or injuring them for having exercised any such right, encouraging people to practice untouchability, or insults or attempts to insult (on the ground of untouchability) a member of the S.C. is punishable with same punishments as above. Encouraging the practice of untouchability is said to include its practice as well as its justification on historical, religious or on any other ground (Section 7);
- (f) **Unlawful compulsory labour:** Compelling a person (on the ground of untouchability) to do scavenging, sweeping, carcass removing or such other job is also punished as above as such acts "are deemed to be enforcing a disability arising out of untouchability" (Section 7-A);
- (g) **Abetment of offence:** Abetting of any offence under the PCRA is punishable with the punishment provided for the offence (Section 10);

(h) **Neglecting investigation of offence by public servants:** The Act makes it punishable as abetment the conduct of public servants who willfully neglect the investigation of offences under the Act. (Section 10);

(i) **Additional punishments for certain offences:** Any person convicted of an offence under the Act a second time is punishable with imprisonment between 6 months and one year and fine of not less than two hundred rupees. For the third offence the imprisonment is to be not less than one year (Section 11). The Court can additionally order cancellation or suspension of licenses in the case of conviction for offences relating to refusal to sell goods or render services etc. (Section 8);

A unique form of punishment prescribed by the Act is in respect of involvement of the inhabitants of an area in the commission of any of the above offences or their abetment, in the harbouring of persons concerned with such offences, in the suppressing of evidence or failing to render all assistance within their power. The State Government in such cases can, by notification in the Official Gazette, impose a collective fine on such inhabitants and apportion the sum payable by each. (Section 10-A);

(j) **Offences by Companies:** Companies, firms or other similar association of individuals if found guilty of an offence under the Act, every person who at the time of the offence was in charge of the affairs of the company shall be deemed to be guilty of such offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offences (Section 14).

SPECIAL RULES OF EVIDENCE AND PROCEDURE FOR TRIAL:

Aware of the vicissitudes and uncertainties of ordinary criminal procedure and determined not to keep the untouchability related law a mere 'paper-tiger', the PCRA has enacted special rules of procedure and evidence for the trial of offences under the Act. These provisions are, in brief, as follows:

(a) Presumption of acts done on the ground of untouchability:

The definition of offences under the Act invariably say that they are offences only if done "on the ground of untouchability". It is a matter difficult to prove in a court of law unless the courts are prepared to infer it as a fact from the circumstances. To enable courts to do so in the normal course, the Act stipulates that if an offence described in the Act is Committed in relation to a member of a Scheduled Caste, "the court shall presume, unless the contrary is proved, that such act was committed on the ground of untouchability" (Section 12). In other words, whenever a Scheduled Caste person is a victim to the social, religious and economic disabilities enforced by another person or persons, the presumption is that it was done "on the ground of untouchability" as required under the Act. The burden of proving it otherwise lies on the defendant.

(b) Offences under the Act are cognizable:

Every offence under the Act is cognizable which means that they can be investigated by the police on their own and if necessary arrests can be made without warrant (Section 15)

(c) Offences are triable summarily:

Except where the offence is punishable with more than a minimum term exceeding three months' imprisonment, all offences under the Act are triable summarily by a Judicial Magistrate. The most expeditious form of trial under the Indian Criminal Procedure is the summary trial which is extended to trial of offences under the Act. (Section 15).

Together with cognizable nature, summary trial and presumption of genesis of conduct on untouchability, the PCRA presumably made a rather strong judicial arrangement for making the guilty punished expeditiously and with relative certainty.

(d) Benefit of Probation not available to offenders:

Ordinarily in respect of violations of social legislations, the lenient alternative of probation is available for offenders and is usually recommended in sentencing by criminal courts. However, in view of the extreme seriousness of offences under the PCRA, probation is totally denied to all persons convicted for offences under the Act except for those below 14 years of age (Section 16-A)

(e) Protection to Enforcement officials acting in good faith:

Being a pro-active legislation, Parliament expects the administration to initiate action under the Act before it is too late. This might in some cases lead to precipitate and avoidable action from enforcement officials which, in turn, might cause unjustified injuries to persons. Unless the officials are protected against possible legal proceedings on account of their actions under the Act, enforcement may be delayed or diluted. To avoid such possibilities, the Act stipulates that acts done in good faith shall not be a ground for any legal action against the Central or State Government even if any damage is caused to any person (Section 14-A). Further, if any public servant is alleged to have committed the offence of abetment of an offence under the Act while acting in the discharge of his official duty, PCRA provides that previous sanction of the concerned Government shall be taken before launching prosecution against him (Section 15 (2))

ACCOUNTABILITY OF STATE/CENTRAL GOVERNMENTS FOR ENFORCEMENT:

Under the Indian Constitutional scheme, responsibility for enforcement of Criminal laws is primarily with the State Government. Many welfare laws do not get enforced partly because of the lack of political will on the part of the Executive and partly because of the non-availability of resources with the State Government. In the case of PCRA, the Act leaves little scope for laxity in enforcement on these or on any other grounds.

The Act requires the Central Government to co-ordinate the measures taken by the State Governments in the implementation of the provisions of the Act and to

place on the table of each House of Parliament, a report on the measures taken by itself and by the State Governments in this regard (Section 15-A (3) and (4)).

The duties cast on the State Government by the Act are more onerous and dynamic from the point of view of facilitating effective implementation. A mandatory duty is imposed on the State Government to ensure the availing of Civil rights by the "Untouchables". The State's duty is not limited to making available the rights, but to ensure that they are actually availed of by the persons subjected to any disability arising out of untouchability. This is a positive provision requiring the State to do a number of things to facilitate enjoyment of rights. Among other things, the State's duties include such things as:

- (a) **Providing adequate Facilities Including Legal Aid:** This could mean easy availability of police protection, the provision for a good communication system between the people concerned and the enforcement machinery, legal literacy and social mobilization for legal action of the target groups, pro-active legal aid which would not depend on victims for evidence and prosecution, immediate rehabilitation of victims, orientation of personnel associated with the enforcement of the Act etc.:
- (b) **Appointment of special supervisory personnel for processing complaints and conducting prosecution;**
- (c) **Setting up of special courts for expeditious trial;**
- (d) **Associating voluntary bodies and social action groups through appropriate committees to assist formulation of policies and programmes in the implementation of the Act;**
- (e) **Identifying areas prone to victimisation of S.Cs. and taking extra care to insulate such areas from the risk of offences; and**
- (f) **Providing for periodic survey on implementation and adopting measures to improve working of the Act.**

The package of duties and responsibilities that the Act imposes on State Government is a unique strategy to ensure that the target groups do, in fact avail of their rights under the Act. It makes difficult for State Governments to put forth alibis and excuses for non-enforcement and make them accountable for full enjoyment of civil rights by the Scheduled Caste inhabitants in their territory.

The apparatus for enforcement envisaged under the Act appears to be a fairly responsive and responsible one if the powers that be in the State Government want to be serious about the legislative intention. A vigilant press and an enlightened citizenry can make the Governments accountable in this regard if they still try to evade responsibility.

In order to carry out the provisions of the Act effectively it would be necessary to have rules in respect of investigation, prosecution and trial of offences as well as in regard to relief and rehabilitation to victims of crimes. The power to frame rules is given by the PCRA to the Central Government which incidentally helps for uniformity and standardization in approaches towards implementation. The State Govern-

ment, however, may, subject to the rules framed by the Central Government, take such administrative measures as may be necessary for ensuring the effective implementation of the Act. Different State Governments depending upon the nature and extent of victimisation in their territory and upon the pressure of public opinion have adopted different measures in respect of deployment of police personnel and procedure, constitution of special and mobile courts, modification of evidentiary and trial procedures, provision for free legal aid, rehabilitation of victims, and co-operation of public-spirited individuals and organizations.

In order to understand the functioning of the system of protection of S.Cs. and S.Ts. in a given State at a given time, it is necessary to study the Rules framed under the Act and the administrative measures mounted within the State. Special Police Cells under senior officers, Special Courts and Mobile Squads, a pro-active legal aid machinery, close association of voluntary organization with the implementation and a vigilant intelligence and monitoring system are usually provided in some of the States prone to untouchability-related offences.

OFFENCES UNDER S.C. AND S.T. (PREVENTION OF ATROCITIES) ACT:

Apparently finding the Protection of Civil Rights Act (PCRA) inadequate to safeguard the dignity and human rights of S.Cs and S.Ts., Parliament passed a special legislation in 1989 creating a large number of new offences of atrocities against S.Cs and S.Ts and providing for its effective prevention and speedy punishment. For short, this law may be referred to here as the Prevention of Atrocities Act (PAA). On the face of it, the new law appears to be a determined legislative response to the challenge of increasing atrocities against Harijans in many parts of the country. Apart from severely criminalizing a variety of uncivilised practices vis-a-vis S.Cs and S.Ts, PAA attempts to plug the loopholes noticed in the implementation of protective legislation of similar nature in the past. The Act is to come into force on a date to be notified by the Central Government.

Altogether PAA creates over two dozen offences classified as "atrocities". These include conduct which tend to destroy the self-esteem, undermine economic rights, outrage the modesty of women, distort legal and administrative processes and influence voting behaviour by force of people belonging to S.C and S.T. The punishments provided are relatively severe indicating legislative attitude on the gravity of the offences described in the Act. The law of procedure and evidence are suitably modified to assist effective enforcement of the provisions for which accountability is to Parliament through an annual report. The Prevention of Atrocities Act, 1989 is indeed a bold step in the direction of meaningful implementation of the Constitutional Directives and pro-active protection of human rights of S.Cs and S.Ts. through co-ordinated State action supported by extreme criminal sanctions.

The list of atrocities punishable under PAA includes the following classes of offences committed by a non-Scheduled Caste/Scheduled Tribe person against an S.C/S.T person:

- (a) **Acts derogatory to human dignity:** These include forcing to drink or eat obnoxious substance, dumping waste in the premises or neighbourhood with intent to cause insult or annoyance, and forcibly removing clothes or parading naked a member of S.C./S.T. etc.
- (b) **Wrongful deprivation of economic rights:** These set of atrocities include forced or bonded labour, wrongful occupation or cultivation of land belonging to S.C/S.T, wrongful dispossession from land or interference with the enjoyment of rights over any land, premises or water, and forcible causing of an S.C/S.T. to leave his house or village;
- (c) **Forcing Voting behaviour:** Use of force or threat of force in order to abstain from voting or voting for particular candidate is made an offence of atrocity against S.Cs/S.Ts.
- (d) **Abuse of legal process:** Insitution of false, malicious and vexatious legal proceedings against S.C/S.T. person as well as giving false or frivolous information to public servants in order to cause injury or annoyances are offences punishable as atrocities under the Act';
- (e) **Dishonouring or outraging modesty of women:** This type of atrocity includes assaulting an S.C/S.T. woman with intent to dishonour or outrage her modesty as well as use of one's dominant position to sexually exploit her;
- (f) **Humiliation in public:** It is an atrocity punishable under the Act to intentionally insult or intimidate in public an S.C/S.T. person with a view to humiliate that person:
- (g) **Acts endangering health:** Fouling water ordinarily used by S.C/S.Ts in order to render it less fit is punishable as atrocity;
- (h) **Denial of access to customary rights or to public places:** Preventing S.C/S.T. person from enjoying customary right of passage to a public place or obstructing use of public places accessible to others are atrocities punishable under the Act.

For all the above offences the punishment prescribed is a minimum of six months' imprisonment and fine. In appropriate cases the imprisonment may extend to five years. Whereas most of the offences under the Protection of Civil Rights Act are punishable with imprisonment between one month to six months only, offences listed under the Prevention of Atrocities Act are punishable with imprisonment between six months to five years. In respect of fine the PCRA limits it to Rs. 500/= only whereas under PAA, it is unlimited.

- (i) **Giving or fabricating False evidence:** Giving or fabricating false evidence intending or knowing it to be likely to lead to conviction of an S.C/S.T. is an offence of atrocity. If the possible conviction of S.C/S.T is for a Capital offence (i.e. punishable with death) then, such persons responsible for false evidence are liable to be punished with life imprisonment and fine; And if an innocent S.C/S.T. is convicted and sentenced to

death by such fabrication, the Act prescribes death as punishment to the person, who gave such evidence.

In cases other than capital offences and punishable with more than seven years' imprisonment, the fabricators of evidence involved are punishable with imprisonment between six months and seven years and with fine;

(j) Mischief by fire to property, house or temple of S.C/S.T:

Committing mischief by fire with intention or knowledge to cause damage to property belonging to S.C/S.T. is punishable with imprisonment between six months and seven years and with fine. If the object of mischief is a dwelling house, temple or warehouse, the punishment shall be life imprisonment and fine;

(k) Committing serious crimes on account of the victim being an S.C/S.T:

Any of the Indian Penal Code crimes punishable with 10 years' imprisonment or more if committed against the person or property of an S.C/S.T. on the ground that such person belongs to such community is an offence of atrocity under the Act punishable with life imprisonment and fine;

(l) Causing disappearance of evidence against offenders guilty of atrocities:

If any person knowingly or under circumstances he has reason to believe that an offence of atrocity has been committed, causes evidence relating thereto disappear in order to screen the offender from punishment or intentionally gives false information is punishable with the punishment provided for that offence;

(m) Public servants guilty of atrocities:

If a public servant commits any of the above offences he shall be punishable with imprisonment ranging between one year and the maximum provided for that offence.

A public servant wilfully neglecting his duties under the Act is also punishable with imprisonment for a term between six months and one year. (Section 3)

(n) Increased punishments in certain cases:

Besides imposing enhanced punishment for subsequent convictions, the Prevention of Atrocities Act provides for the forfeiture of property, movable or immovable, used for the commission of the offence. Also, during the pendency of the trial, the Court can order attachment of property which, on conviction, can be forfeited to the extent it is required for the purpose of realisation of any fine imposed. (Section 4,5 and 7)

(o) Involvement of groups of persons:

There is also a provision for imposing collective fine if inhabitants of an area are involved in any offence punishable under the Act. (Section 16)

SPECIAL COURT AND PREVENTIVE PROVISIONS:

(i) Special Court:

For the purpose of providing for speedy trial, the State Government is required by the Act to specify for each District, a Court of Session to be a Special Court to try the offences under this Act (Section 14).

(ii) Special Public Prosecutor:

For each such special Court, the State Government shall specify a Public Prosecutor or appoint an Advocate with not less than seven years' practice as a Special Public Prosecutor for conducting cases under the Act.

(iii) Action for keeping Peace in atrocities-prone areas:

The Act provides for preventive strategies to avoid the commission of atrocities against S. Cs and S. Ts. Police officers and Executive Magistrates having reasons to believe that offences under the Act are likely to be committed can declare such places as atrocities - prone and can take necessary action for keeping the peace and good behaviour according to the relevant provisions of the Code of Criminal Procedure. Furthermore, the State Government is empowered to make suitable schemes to prevent atrocities and to restore the feeling of security amongst the S. Cs and S. Ts. (Section 17)

(iv) Non-availability of anticipatory bail:

Persons liable to be arrested for offences under the Act are denied the right to seek "anticipatory bail" available to other accused under Section 438 Cr. P. C. (Section 18).

(v) Non-availability of probation:

Nor are the provisions of Section 360 Cr. P.C. and the provisions of the Probation of Offenders Act available to those convicted for offences under the Prevention of Atrocities Act unless the person concerned happens to be below eighteen years of age. (Section 19)

(vi) Removal of person likely to commit offence:

Special Courts on a complaint or a police report of the likelihood of some person of commission of an offence under the Act, can by order in writing direct such person in "Scheduled areas" to remove himself beyond the limits of such area for a period upto two years (Section 10)

Persons so externed can represent to the Special Court within thirty days of the order and seek modification of the order. However, if the person so externed fails to remove himself as directed or having so removed himself enters within the period specified in the order, the Special Court may cause him to be arrested and kept in police custody. The Special Court can also seek from the person concerned a bond with or without surety for due observance of conditions imposed. (Section 11)

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