

A STATE OF KARNATAKA
v.
APPA BALU INGALE AND ORS.

DECEMBER 1, 1992

B [KULDIP SINGH AND K. RAMASWAMY, JJ.]

Constitution of India, 1950: Articles 15, 17, 23 and 29—Untouchability—Eradication of—Sociological and constitutional angulations—Considered.

C *Protection of Civil Rights Act, 1955: Sections 4 and 7—Untouchability—Practice of—Members of Harijan Community restrained by show of force from drawing water from newly dug well—Trial Court and appellate court holding charge against accused proved beyond reasonable doubt—In revisional jurisdiction High Court reappreciating evidence and reversing conviction and sentence of accused—Validity of—Scope of legislation—Explained—Court to interpret provisions keeping in view constitutional goals and purpose of Act.*

E The first respondent and four others were tried for the offences under Sections 4 and 7 of the Protection of Civil Rights Act, 1955. The trial court convicted all of them under Section 4 of the Act and sentenced them to undergo simple imprisonment for one month and a fine of Rs.100 each, and in default to suffer simple imprisonment for further five days. The first respondent was further convicted under Section 7 of the Act but no separate sentence was awarded. On appeal, the Additional Sessions Judge, F upheld the conviction and sentence of the first respondent and two others, but allowed the appeal of the other two convicts and acquitted them. A Single Judge of the High Court allowed the criminal revision petition filed by the first respondent and two others. Hence, the appeal by special leave by the State. During the pendency of the appeal, the first respondent died G and the appeal against him thus abated.

Allowing the appeal, this Court

H HELD: 1.1. There is no infirmity in the evidence of the prosecution witnesses. The High Court lost sight of the fact that disability of the Harijan Community was enforced on a threat of using a gun. It is proved

beyond doubt that complainants were stopped from taking water from the well on the ground that they were untouchables. [290-G] A

1.2. The charge against the respondents was that they restrained complainant party by show of force from taking water from a newly dug-up borewell on the ground that they were untouchables. The prosecution produced four witnesses who were all Harijans. The trial court and the Appellate Court, on appreciation of the evidence, reached the concurrent-finding that the charge against the respondents-accused was proved beyond reasonable doubt. Ordinarily, it is not open for the High Court to interfere with the concurrent findings of the Courts below specially by re-appreciating the evidence in its revisional jurisdiction. The High Court disbelieved evidence of all the four witnesses who deposed to the actual incident as happened before their eyes. It was of the view that their evidence was not uniform in regard to actual words uttered by the accused persons and the manner in which they prevented the complainant party from taking water from the well. The High Court rejected the testimony of the eye witnesses on the ground that it could not be said with any amount of certainty which accused was guilty of the offences and that the evidence adduced on behalf of the prosecution was wholly insufficient to establish the charge of the offence under Section 4(iv) of the Act levelled against the accused. The High Court fell into patent error in rejecting the prosecution evidence. The charge against the respondents has been proved beyond doubt. [289-C-E; 290-A] B C D E

Per Ramaswamy, J. (Concurring)

1.1. The criminal law primarily concerns with social protection, prescribes rules of behaviour to be observed by all persons and punishes them for deviance, transgression or omission. *Mens rea* is not an essential ingredient in social legislations is the settled law. Where social necessity demands from the angle of public welfare or because of the difficulty of proof of accused's mental stage, jurisprudence points dispensing with or of the onus of proof of *mens rea*. [307-B-C] F G

1.2. The Judge concentrated more on sequence or absence of parrot like repetition of ocular words spoken by illiterate persons or play upon words and sought consistence forsaking the sense it conveyed and the effect it produced in preventing PWs. 1 to 4 and other Dalits to exercise the right to draw water from public bore-well. The High Court gave the benefit of H

A doubt when in fact, no such benefit does arise from evidence, if considered in proper perspectives, nor exist to reach the finding of guilty. [307-E-F]

B 2.1. Article 17 of the Constitution of India, in Part III, a Fundamental Right, made an epoch making declaration 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. 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 amended in 1976 as "Protection of Civil Rights Act". Abolition of untouchability in itself is complete and its effect is all prevailing applicable to state actions as well as acts or omission by individuals, institutions, juristic or body of persons. [292-F, G]

C 2.2. Neither the Constitution nor the Act defined 'Untouchability'. Reasons are obvious. It is not capable of precise definition. It encompasses acts/practices committed against Dalits in diverse forms. [298-H]

D 2.3. Untouchability is founded upon prejudicial hatred towards Dalits as an independent institution. It is an attitude to regard Dalits as pollutants, inferiors and out-castes. It is not founded on *mense rea*. The practice of untouchability in any form is, therefore is a crime against the Constitution. The abolition of untouchability is the arch of the Constitution to make its preamble meaningful and to integrate the Dalits in the national main stream. Disabilities to which Dalits are subjected to, have been outlawed and denial thereof offends the right to equality enshrined in Article 14 of the Constitution etc. The Act also protects civil rights of Dalits. [300-D, E]

E 2.4. The scheme in Part III, namely, fundamental rights, is to remove disabilities to which the Dalits are subjected to and to provide positive rights in their favour and Part IV Directive Principles fasten duties on the State to render socio-economic and political justice and to protect them from all forms of exploitation and injustice. In other words, Constitution charges the state to improve the quality of their life, social, economic and cultural pursuits as part of meaningful right to life guaranteed under Article 21 of the Constitution. [301-C, D]

F 2.5. The thrust of Article 17 and the Act is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal

or moral base. It seeks to establish new ideal for society - equality to the Dalits, at par with general public, absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities and a sense of being a participant in the main stream of national life.

[306-G]

2.6. The Act not only prescribes penal offences but also accords civil and social rights as part of constitutional scheme. It requires to be enforced, interpreted and the evidence evaluated on the touch-stone of the constitutional creed and ethos and any negation would abrogate and abrogate the constitutional policy. [303-E]

2.7. Judiciary acts as a bastion of the freedom and of the rights of the people. Power of judicial review, a constituent power has, therefore, been conferred upon the judiciary which constitutes one of the most portent and potent weapons to protect the citizens against violation of social, legal or constitutional rights. Therefore, the judges would adopt purposive interpretation of the dynamic concepts of the Constitution and the Act with its interpretative armoury to articulate the felt necessities of the time. The Judge must also bear in mind that social legislation is not a document for fastidious dialects but means of ordering of the life of the people. Judiciary does not forsake the ideals enshrined in the Constitution, but make them meaningful and make the people to realise and enjoy the rights. This Court as the vehicle of transforming the nation's life, should respond to the nation's needs and to interpret the law with pragmatism to further public welfare to make the constitutional animations a reality. Common sense is always served in the court's ceaseless striving as a voice of reason to maintain the blend of change and continuity of order which is *sine quo non* for stability in the process of change in a parliamentary democracy. [305-B-F; 306-A-E]

2.8. In interpreting the Act, the Judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light thus shed to annihilate untouchability; to accord to the Dalits and the Tribes right to equality, social integration a fruition and fraternity a reality.

[306-F]

Shastri Yagnapurushdasji & Ors. v. Muldas Bhandardas Vaishya & Anr., [1966] 3 S.C.R. 242; *Minerva Mills Ltd. & Ors. v. Union of India &*

A *Ors.*, [1981] 1 S.C.R. 206; *Plassey v. Ferguson*, 41 Lawyers' Edn. 356 (163) US 537; *Oliver Brown v. Board of Education of Topeka*, 98 Lawyers' Edn. 873 (347 US 483) 1964 and *Josheph Lee Jones v. Alfrade N. Mayer Co.*, 20 Lawyers' Edn. 2d 1189 (392 US 409) 1968, referred to.

Constituent Assembly Debates, Vol. 3 pp. 434-435, referred to.

B Dr. B.R. Ambedkar's "*The Untouchables*", p.1 and 28; *Social and Economic Development in India, a Reassessment*: Edited by Dilip K. Basu & Richar Sision, 1986 Edn.; James M. Freeman's "*Consciousness of Freedom among India's untouchables*", p.160-161; S.R. Kakade: *Scheduled Castes and National Integration*, 1990 Edn.; Dr. Dinesh Khosla: "*Myth and Reality of the Protection of Civil Rights Law*", 1987 p.32; '*Impact of Social Legislation on Social Change*', 1971; Dr. Khosla's *Myth and Reality of the Protection of Civil Rights Law*, p.67; 21st report of SC & ST Commission, p.165; Mahatma Gandhiji's '*My philosophy of Life*': Edited by A.T. Hingorani 1961 Edn. p.146; Lela Dushkin : '*The Policy of the Indian National Congress towards the Depressed Classes and Historical Study*, 1967 Edn.; Dr. M.C.J. Kagzi : *Segregation and Untouchability Abolition*, 1976 Edn. p.207; M.P. Jain : *Indian Constitutional Law*, 4th Edn. 1987 P. 522, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.164 of 1983.

From the Judgment and Order dated 1.4.1981 of the Karnataka High Court in Crl. Revision Petition No.478 of 1980.

M. Veerappa for the Appellant.

K.R. Nagaraja for the Respondents.

The Judgments of the Court were delivered by

G KULDIP SINGH, J. Appa Balu Ingale and four others were tried for the offences under sections 4 and 7 of the Protection of Civil Rights Act, 1955 (The Act). The trial court convicted all of them under section 4 of the Act and sentenced them to undergo simple imprisonment for one month and a fine of Rs.100 each and in default to suffer simple imprisonment for further five days. Appa Balu Ingale was further convicted under section 7 of the Act but no separate sentence was awarded to him for the said offence. The Additional Sessions Judge Belgaum, on appeal, upheld

the conviction and sentence of Appa Balu Ingale, Shankar Babaji Patil and Rajaram Rama Sankpal. The learned Judge, however, allowed the appeal of the other two convicts and acquitted them. Against the judgment of the Appellate Court Appa Balu Ingale and two others went in revision before the High Court. The learned Single Judge of the Karnataka High Court allowed the criminal revision petition and acquitted all of them. This appeal by way of special leave petition is by the State of Karnataka against the judgment of the High Court. During the pendency of the appeal respondent Appa Balu Ingale died on November 4, 1991. The appeal against him has thus abated.

The charge against the respondents was that they restrained the complainant party by show of force from taking water from a newly dug-up borewell on the ground that they were untouchables. The prosecution produced four witnesses who were all Harijans. The trial court and the appellate court, on appreciation of the evidence, reached the concurrent-finding that the charge against the respondents-accused was proved beyond reasonable doubt. Ordinarily it is not open for the High Court to interfere with the concurrent findings of the courts below specially by reappreciating the evidence in its revisional jurisdiction. The High Court disbelieved evidence of all the four witnesses who deposed to the actual incident as happened before their eyes. According to the High Court their evidence was not uniform in regard to actual words uttered by the accused persons and the manner they prevented the complainant party from taking water from the well. The High Court rejected the testimony of the eye witnesses on the following reasoning:-

"Thus, not only the evidence of these witnesses regarding the actual manner in which the accused obstructed and what words they uttered, is discrepant and not consistent, but what is not certain from the evidence is as to who among the accused persons obstructed and used those particular words attributed to the accused. It cannot expect that all the accused would use the words simultaneously in a chorus in the manner the witnesses stated before the court. Therefore, it cannot be said with any amount of certainty which among the accused was guilty of the offence. The evidence adduced on behalf of the prosecution was wholly insufficient to establish the charge

A of the offence under Sec. 4(iv) of the Act levelled against them."

B We are of the view that the High Court fell into patent error in
C rejecting the prosecution evidence. We have examined the statements of
D eye witnesses as dealt with in detail by the appellate court. We are of the
E view that the charge against the respondents has been proved beyond
F doubt. PW1 Thalu, who is the complainant, has deposed that the borewell
in question was being drilled at a distance of about 15 feet from Harijan
colony and water sprouted from the well on the date of the incident at
about 9.30 p.m. At that time many person including the accused persons
and some Harijans including PWs 1 to 4 were present there. Two young
girls of the Hindu community performed pooja. Thereafter 10/15 Hindus
took water from the well for performing pooja at the temple. He further
stated that he along with five other persons including PWs, who were all
Harijans, also brought pots for taking water from the well. At that time the
three respondents told the Harijans not to take water from the well as they
were "mahars" and that there was a separate well for them. According to
the complainant the three respondents further obstructed the Harijans
from taking water saying that if the Harijans insist on taking water the
result would be unhappy. Respondent 1 told his men to bring a gun from
his house and threatened the Harijans with dire consequences. The com-
plainant further stated that he told the accused persons that the Harijans
have also right to take water from the well. On that the respondents-ac-
cused told the Harijans not to persist on taking water from the well
otherwise the consequences would be serious. The Harijans thereafter left
the well without taking water and went to their colony. PW2, Appaji Sinde,
PW3, Sripati Mane and PW4, Lahu Shinde have repeated the occurrence
in similar words as stated by PW1.

G We have given our thoughtful consideration to the prosecution
evidence as appreciated by the courts below. We do not find any infirmity
in the evidence of the prosecution witnesses. The High Court lost sight of
the fact that the social disability of the Harijan community was enforced
on a threat of using a gun. It is proved beyond doubt that the complainants
were stopped from taking water from the well on the ground that they were
untouchables.

H We allow the appeal, set aside the judgment of the High Court and
restore the judgment of the learned Additional Sessions Judge Belgaum

dated September 5, 1980. Respondents Shaṅkar Babaji Patil and Rajaram Rama Sankpal shall undergo the sentence of simple imprisonment for one month and to pay the fine of Rs.100 each with the default clause as awarded by the trial court and upheld by the learned Additional Sessions Judge. A

While agreeing with the judgment propose by me K. Ramaswamy, J. has gone into "sociological and constitutional angulations" at great length. I appreciate the erudite exposition of thoughts by the learned Judge, however, I do not wish to express any opinion and confine myself to the merits of the appeal. B

K. RAMASWAMY, J. In 1852 Frederick Douglass, a leading Black abolitionist of slavery described his agony on the eve of America's Independence Day thus: C

"This Fourth of July is yours, not mine. You may rejoice, I must mourn. To drag a man in fetters to the grand illuminated temple of liberty, and call upon him to join you in joyous anthems, were inhuman mockery and sacriligious irony... I say it with a sad sense of the disparity between us. I am not included within the pale of this glorious anniversary.... the blessings in which you, this day, rejoice, are not enjoyed in common. The rich inheritance of justice, liberty, prosperity and independence, bequeathed by your fathers, is shared by you, not by me. The sunlight that brought light and healing to you, has brought stripes and death to me." D E

Same was the poignant agony of the Indian Scheduled Castes, Untouchables, for short 'Dalits' on the eve of August 15, 1947, Indian Independence Day. F

On December 1, 1862, in the midst of fierce civil war to abolish slavery and the debate on the floor of the Senate to accord Civil rights to Negroes was going on, Abraham Lincoln, the President of United States of America who later laid his precious life for that cause sent his message to the Senate with memorable words thus:- G

"Fellow citizens, we cannot escape history. We.... will be H

- A remembered in spite of ourselves. No personal significance or insignificance can spare one or another of us. The fiery trial through which we pass will light us down in honor or dishonor to the latest generation.... We.... hold the power and bear the responsibility."
- B The preamble of the Indian Constitution imbued among its people with pride of being its citizens in an intergrated Bharat with fraternity, dignity of person and equality of status. But castism; sectional and religious diversities and parochialism are disintegrating the people. Social stratification need restructure. Democracy meant fundamental changes in the social and economic life of the people, absence of inequitous conditions, inequalities and discrimination. There can be no dignity of person without equality of status and opportunity. Denial of equal opportunities in any walk of social life is denial of equal status and amounts to prevent equal participation in social intercourse and deprivation of equal access to social means. Humane relations based on equality, equal protection of laws without discrimination would alone generate amity and affinity among the heterogenous sections of the Indian society and a feeling of equal participants in the democratic polity. Adoption of new ethos and environment are, therefore, imperatives to transform the diffracted society into high degree of mobility for establishing an egalitarian social order in Secular Socialist Democratic Bharat Republic. "Untouchability" of the Dalits stands an impediment for its transition and is a bane and blot on civilised society.
- C
- D
- E

- F Article 17 of the Constitution of India, in Part III, a Fundamental Right, made an epoch making declaration 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. In exercise of the power in second part of Art. 17 and Art. 35 (a)(ii), the Untouchability (Offences) Act 1955 was made, which was renamed in 1976 as "Protection of Civil Rights Act", for short 'the Act'. Abolition of untouchability in itself is complete and its effect is all prevading applicable to state actions as well as acts of omission by individuals, institutions, juristic or body of persons. Despite its abolition it is being practised with impunity more in breach. More than 75% of the cases under the Act are ending in acquittal at all levels. Apathy and lack of proper perspectives even by the courts in tackling the naughty problem is obvious.
- G
- H For the first time after 42 years of the Constitution came into force this

first case has come up to this Court to consider the problem. The Act is not a penal law simpliciter but bears behind it monstrous untouchability relentlessly practised for centuries dehumanising the Dalits, constitution's animation to have it eradicated and to assimilate 1/5th of Nation's population in the main stream of national life. Therefore, I feel that it would be imperative to broach the problem not merely from the perspectives of criminal jurisprudence, but more also from sociological and constitutional angulations. While respectfully agreeing with my learned brother Kuldip Singh, J. on his reasoning, conclusions and conviction, it is expedient, therefore, to have the case considered from the above back drop and address ourselves to the questions that arose for decision.

It is trite that the Caste system among the Hindus has been structured on graded hierarchy of Chaturvarnya and the Dalits and Scheduled Tribes (for short 'tribes') from among whom Sudras occupy the last rung in the social ladder. Impregnable walls of separation with graded inequalities has, thus, been erected between different sections among Hindus. The Dalits are made to serve the society in menial jobs as slaves and serfs. Caste system segregated them from the main stream of the rational life and prevented the Hindus from becoming in integrated Society with fraternity and affinity. The Dalits are denied even access to potable water sources, education, cultural life and economic pursuits. They are made to live as beasts of burden at the outskirts of the villages, towns, slums etc. The Tribes live in intractable terrains and forests. Manu Smrithi prohibited the Dalits to wear decent clothes, wear precious metallic ornaments or even to use decent utensils, food and drink. This had led to the abominable and abnoxious practice of untouchability, depriving them of social intercourse, educational and cultural development and were condemned as worse than animals. In the words of Bharat Ratna Babasaheb Dr. B.R. Ambedkar in his preface to his book "The untouchables" page I, that "it is a diabolical contrivance to suppress and enslave humanity. Its proper name would be "infamy". At page 28, he stated that "untouchability..... is a unique phenomenon unknown to humanity in other parts of the world. Nothing like it is to be found in any other society - primitive, ancient or modern. In one of his post independent fiery speeches, Dr. Ambedkar with his characteristic clarity and piercing appeal to the Dalits stated thus:-

"In order to have a clear understanding of untouchability and its practice in real life, I want you to recall the stories

A of the atrocities perpetrated against you. The instances of
beating by caste Hindus for the simple reason that you
B have claimed the right to enrol your children in govern-
ment schools, or the right to draw water from a public
well, or the right to take a marriage procession with the
groom on horseback, are very common. You all know such
instances, as they happen before your eyes. But there are
several other causes for which atrocities are committed on
the Untouchables by the caste Hindus which, if revealed,
C surprise foreigners. The Untouchables are beaten for put-
ting on clothes of good quality. They have been whipped
because they used utensils made of metal like copper, etc.
Their houses are burnt because they have brought land
under cultivation. They are beaten for putting on the
D sacred thread. [A visible symbol worn by high-caste Hin-
dus.] They are beaten for refusing to carry dead animals
and eat carrion, or for walking through the village with
socks and shoes on, or for not bowing down before the
caste Hindus, for taking water in a copper pot while going
out to the fields to ease themselves. Recently an instance
has been noted where the Untouchables were beaten for
E serving chapatis at a dinner party.

"You must have heard and some of you must have ex-
perienced such atrocities. Where beating is not possible,
you are aware of how the weapon of boycott is used
against you. You all know how the caste Hindus have
F made daily life unbearable by prohibiting you from getting
work, by not allowing your cattle to graze in the jungles
and prohibiting your men from entering the village. But
very few of you have realised why this happens. What is
the root of their tyranny? To me, it is very necessary that
we understand it.

G The instances cited above have nothing to do with the
virtue and vices of an individual. This is not a feud between
two rival men. The problem of untouchability is a matter
of class struggle. It is a struggle between caste Hindus and
H the Untouchables. This is not a matter of doing injustice

against one man. This is a matter of injustice being done by one class against another. This struggle is related to social status. This struggle indicates how one class should keep its relationship with another class of people. The struggle starts as soon as you start claiming equal treatment with others. Had it not been so, there would have been no struggle over simple reason like serving chapatis, wearing good quality clothes, putting on the sacred thread, fetching water in a metal pot, sitting the bridegroom on the back of a horse, etc. In these cases you spend your own money. Why then do the high-caste Hindus get irritated? The reason for their anger is very simple. Your behaving on par with them insults them. Your status in their eyes is low, you are impure, you must remain at the lowest rung. Then alone will they allow you to live happily. The moment you cross your level the struggle starts.

The instances given above also prove one more fact. Untouchability is not a short or temporary feature; it is a permanent one. To put it straight, it can be said that the struggle between the Hindus and the Untouchables is a permanent phenomenon. It is eternal, because the high-caste people believe that the religion which has placed you at the lowest level of the society is itself eternal. No change according to time and circumstances is possible. You are at the lowest rung of the ladder today. You shall remain lowest forever."

According to him untouchability is an indirect form of slavery and only an extension of caste system. Caste system and untouchability stand together and will fall together. The idea of hoping to eradicate untouchability without destroying caste system is an utter futility. The problem to the Dalits is discrimination of high order next to the problem of recovering their manhood. In every nook and corner of the country, the Dalits face handicaps, suffer discrimination and are meted out injustice as a daily routine.

Despite the missionary work of reformers like Mahatma Jyotiba Phule, Periar E.V. Ramaswami Naiker, Swamy Dayanand Saraswathi and host of

A
B
C
D
E
F
G
H

- A others to awaken social consciousness amongst untouchables their efforts remained unsuccessful. Dr. Ambedkar having been the victim of this cruel practice and suffered the ignomy of throwing files by peons at his face while he was Military Secretary of Maharaja of Baroda, beaten up for staying in incognito as a paying guest in a Parse Inn etc. became their crusader. He roused the Dalits' consciousness to fight for eradication of untouchability, to claim equality of treatment, status and opportunity and of equal rights, civil, political, social and economic and of dignity of person. Mahatma Gandhiji, the father of the Nation, too sincerely worked to abolish untouchability and named them as Harijans (children of God). The rights secured by Ambedkar in Poona Pact and 1934 Congress resolution formed foundation for Art. 17.
- B
- C Though the tenets of other religions do not preach, by imitation, they too practice untouchability, though not in strict rigour.

- Empirical study conducted by Sociologists, like, in Social and Economic Development in India, a Reassessment edited by Dilip K. Basu and Richard Sison, Sage Publication, New Delhi, 1986 Edition, in the Chapter "Consciousness of Freedom among India's Untouchables", by James M. Freeman said that the Dalits are "world's most oppressed minorities". At p.160 he stated that severe economic domination usually has been sufficient to keep the untouchables in line, but evidence exists that the ultimate sanction was the use and threat of physical force. The numerically larger and wealthier dominant high castes are quite capable of and in fact did crush the slightest perceived resistance to their will. At p.161 it was further stated that since independence, and particularly since 1970's as Untouchables have more openly resisted discrimination, reports of terrorism against them have increased both in number and in ferocity;
- D
- E gouging out the eyes of Untouchables in full view of assembled villagers who are terrified into silence, burning groups of Untouchables to death, chopping of their hands or feet, raping women, destroying whole villages are routine. At p.169 in conclusion he stated that "Indian independence is a watershed event precisely because it both embodied this ideal of a new order and in fact has set in motion widespread and momentous changes that have affected virtually every Indian citizen, including the 100,000,000 Untouchables of India. The changes include both the heightened consciousness and resistance of untouchables to oppression as well as determined backlash of other castes against them. Similar views were made in Socio-economic Study by S.R. Kakade in his Scheduled Castes & National
- F
- G
- H Integration 1990 Edn. Socio-religious study in 'Main Currents in Indian

Society and Cohesion and Conflicts in Modern India' Vol.3, edited by G.R. Gupta, Dr. Dinesh Khosla, a human rightist, after studying the conditions of untouchables and impact of protection of Civil Rights Act *vis-a-vis* human rights interacting with all sections of rural North India and staying with Dalits, in his "Myth and Reality of the Protection of Civil Rights Law", Hindustan Publishing Corporation (India) Delhi, 1987, stated at p.32 that untouchability thwarted the liberation of the human mind from the oppressive trappings of centuries old traditions, beliefs, and myths; that it constantly emphasised the fact of birth in a caste, ultimately untouchability depressed and dampened the psychological motivations for social and economic development. Law in its formal and institutional sense was, thus, rendered meaningless to the contemporary life of the untouchables. He stated that the Act did not knock at the doors of those, who submerged in the traditions nor helped Dalits. S/Sri Bishwa B. Chatterjee, Sheo Swarath Sing and Dharam Raj Yadav in their 'Impact of Social Legislation on Social Change', the Minerva Associates Publication of 1971, in their survey in West Bengal from socialist point of view, high-lighted the still prevalent untouchability in rural India and all the authorities do emphasise the need for proper and expeditious remedy.

Proverty and penury made the Dalits as dependants and became vulnerable to oppression. The slightest attempt to assert equality or its perceived exercise receives the ire of the dominant sections of the society and the Dalits would become the object of atrocities and oppression. The lack of resources made the Dalits vulnerable to economic and social boycott. Their abject poverty and dependence on the upper classes in Rural Indian for livelihood stands a constant constraint to exercise their rights - social, legal or constitutional, though guaranteed. Thus they have neither money capacity, influence nor means to vindicate their rights except occasional collective action which would be defeated or flittered away by pressures through diverse forms. Consequently most of the Dalits are continuing to languish under the yoke of the practice of untouchability. The State has the duty to protect them and render social justice to them.

The statue of Swami Sampuranand at Varanasi when unveiled by no less than the 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** a repetition of Mahad Tank water 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. 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
- B** food to the Chief Minister thinking to have been polluted. 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. On October 30, 1978, the Doctor in
- C** Govt. Hospital in Monger did not admit a Sweeper Dalit women, who was struggling for life. (Vide Dr. Khosla's *Myth and Reality of the protection of Civil Rights Law*, p.67). 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
- D** in the houses of Dalit or backward class judges. 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). Mass murders from Belchi in North to Tsundur in South India, gang rapes of Dalit women and arson of their huts; the mass movement by women volunteers to stop blatant practice of untouchability in the hotels
- E** 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 Main-stream 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. Thus even persons who
- F** improved their social status, economic position or holders of constitutional offices are no exceptions to the wrath and plague of untouchability and are self evident truths. So Dr. Ambedkar is right when he wrote that "untouchables are born and die as untouchables" and the scorn and scoff is carried from birth to graveyard. The emphasis here is not on individuals but to highlight the acuteness of the problem and the urgency to eradicate the
- G** evil; the insensitivity which the Dalits are subjected to; the remedy provided under the Act and the acute need to implement the law strictly.

Neither the Constitution nor the Act defined 'Untouchability'. Reasons are obvious. It is not capable of precise definition. It encompasses

H acts/ practices committed against Dalits in diverse forms. Mahatama

Gandhiji in his *'My philosophy of Life'* edited by A.T. Hingorani 1961 Edn. at p.146, stated that "untouchability means pollution by the touch of certain person by reason of their birth in a particular state of family. It is a phenomenon peculiar to Hinduism and has got no warrant in reasons or sastras". According to Dr. Ambedkar, "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.

Lela Dushkin in his *'The Policy of the Indian National Congress towards the Depressed Classes and Historical Study, 1967 Edition* stated that untouchability is ordinarily used in all sense, first to refer to the pollution - stigma attached to untouchables, secondly to refer to the set of practice engaged in by the rest of the society to protect itself from pollution conveyed by the untouchables and to symbolise their inferior status. Dr. M.C.J. Kagzi in his *Segregation and Untouchability Abolition, 1976 Edition*, at page 207 stated that it (untouchability) connotes the acts, action or practice of non-touching of the members of the lowest by the caste Hindus, which means separation, segregation and isolation of such persons from the higher caste Hindus. It means keeping the Harijan untouchables outside the mission. Swami Vivekanand had stated in his complete works that "we refuse entirely to identify ourselves with 'do not touch me'. That is not Hinduism. It is in none of our books. It is an orthodox superstition which has interfered with national life all along the line".

In *Shastri Yagnapurushdasji & Ors. v. Muldas Bhundardas Vaishya & Anr.*, [1966] 3 SCR 242, this Court speaking through Gajendragadkar, C.J. held that 'untouchability is founded by superstition, ignorance, complete misunderstanding of the true teachings of Hindu religion'. Sardar Vallabh Bhai Patel, during the course of the discussion on the floor of the Constituent Assembly stated that, removal of untouchability is the main idea.

A If abolition of untouchability is provided as a fundamental right, as an offence, necessary adjustment will be made in the law that can be passed by the legislature, vide C.A.D. Vol.3, pages 434-35.

B Thus it could be concluded that the untouchability has been grown as an integral facet of socio-religious practices being observed for over centuries; kept the Dalits away from the main-stream of the Society on diverse grounds, be it of religious, customary, unfounded beliefs of pollution etc. It is an attitude and way of behaviour of the general public of the Indian social order towards Dalits. Though it has grown as an integral part of caste system, it became an institution by itself and it enforces disabilities, restrictions, conditions and prohibitions on Dalits for access to and the use of places of public resort, public means, roads, temples, water sources, tanks, bathing ghats; etc., entry into educational institutions or pursuits of avocation or profession which are open to all and by reason of birth they suffer from social stigma. Untouchability and birth as a scheduled caste are thus intertwine root causes. Untouchability, therefore, is founded upon prejudicial hatred towards Dalits as in independent institution. It is an attitude to regard Dalits as pollutants, inferiors and out-castes. It is not founded on *mense rea*. The practice of untouchability in any form is, therefore, a crime against the Constitution. The Act also protects civil rights of Dalits. The abolition of untouchability is the arch of the Constitution to make its preamble meaningful and to integrate the Dalits in the national main-stream.

F In furtherance thereof Art.15(2) removed disabilities that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subjected 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. Art. 23(1) prohibits begar and other similar forms of forced labour, (bonded labour). Article 23 also prohibits traffic in woman (Jogins and Devadasi system thrive on cruel monster of custom). Art.29(2) prohibits denial of admission into an educational institution maintained by the State or receiving aid out of State funds on grounds only of.....caste or any of them. Art.25 guarantees freedom of religion and its exercise thereof is made available to Dalits, Sub-clause H (2) thereof envisages that nothing in that article shall affect the operation

of the existing law or prevent the State from making any law to provide for social welfare and reform or to throw open Hindu religious institutions of a public character to all classes and sections of Hindus. A

Thus disabilities to which Dalits are subjected to, have been outlawed and denial thereof offends the right to equality enshrined in Art. 14 of the Constitution etc. These provisions also furnish evidence of sociology that Dalits have been denied access to all the public means open to the general public and of public amenities. The practice of untouchability is the root cause for social segregation, denial of opportunities for educational, economic and cultural pursuits; Dalits are subjected to severe discrimination, disabilities, liabilities, prohibitions, restrictions or conditions etc. The scheme in Part III, namely, fundamental rights is to remove disabilities to which the Dalits are subjected to and to provide positive rights in their favour and Part IV directive principles fasten duties on the State to render, socio-economic and political justice and to protect them from all forms of exploitation and injustice by operation of Art. 38 and Art.46 of the Constitution. In other words Constitution charges the state to improve the quality of their life, social, economic and cultural pursuits as part of meaningful right to life guaranteed under Art.21 of the Constitution. B C D

The above provisions seeks to serve three-fold purposes; (i) outlawed the disabilities to which Dalits are subjected to; (ii) they are made an offence under the Act; and (iii) provided rights enforceable as civil rights. Untouchability is the root cause and consequently any religious, social, customary or moral grounds to enforce untouchability no longer subsists nor is valid after January 26, 1950. Enforcement of any disability is a crime against human rights and the Constitution entails the wrong doer with punishment. All customs, usages, practices directly or indirectly recognising or encouraging the practice of untouchability in any form is void, being opposed to public policy. Even a contract, covenant or any private transaction tending to recognise, encourage or effectuate untouchability in any form is, therefore, void *ab initio*. E F G

The right to reservation for appointment to an office or a post under the state, has been guaranteed under Arts.16 and 14 and right to admission into an educational institution is guaranteed under Arts. 15 & 29(2). The right to residence and settlement in any part of the country has been guaranteed under Art. 19(1)(e) and right to an avocation or a profession H

- A has been guaranteed by Art. 19(1)(g). Article 335 gives them the right to an appointment to an office or post under the State. These positive rights created in favour of the Dalits, when violated or denied, they are not only enforceable in a court of law but also the infractors are liable to punishment under the Act. Take for instance the practice of bonded labour is not only an offence but its abolition is also a right enforceable under Abolition of Bonded Labour Regulation Act. Similarly the institution of (Jogins and Devadasi) by virtue of its prohibition under Art.23 is no longer a valid custom. Any person tending to encourage it, is liable for not only damages but also criminal prosecution. Similarly denial of admission into educational institution on grounds of caste is an offence and also is enforceable through an appropriate proceedings. To impede the exercise of the right to residing in any part of the country and settlement, on grounds of untouchability is not only an offence but the conduct amounts to an offence under the Act. Under the welfare scheme when the houses constructed for the Dalits, Tribes and backward classes, if so allotted as to perpetuate untouchability, the officer not only commits misconduct in the discharge of public duty but also by his conduct becomes liable for prosecution. Any contract or sale of the allotted lands or buildings to others is void being opposed to public policy and the purchaser acquires no right, title or interest therein. The Dalits or the State are entitled to restitution of such houses or lands allotted to them.

- E
 Art. 51A Fundamental duties in Chapter IVA brought by the Constitution 42nd Amendment Act, 1976 enjoins as a fundamental duty every citizen to promote harmony, spirit of brotherhood amongst all the people transcending sectional diversities etc. to develop scientific temper, humanism, the spirit of inquiry, reform and to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement. Poverty, illiteracy and caste system are positive dangers to democracy. Democracy is essentially a form of society. Political democracy without social democracy cannot last long. Elevation of the less privileged to the level of other sections of society is essential, otherwise democracy would be in danger. Political and economic democracy would be of no avail unless social inequalities are removed. The Act is an instrument to effectuate civil, social, cultural, economic and constitutional rights of the Dalits.

- H In *Minerva Mills Ltd. & Ors. v. Union of India & Ors.*, [1981] 1 SCR 206 at p.250, this Court, speaking per majority Chandrachud, C.J. angulated

harmony between the fundamental rights and the directive principles as goals of social revolution under rule of law and held that "there is no sphere of public life where delay can defeat justice with more telling effect than the one in which the common man seeks the realisation of his aspirations. The promise of a better tomorrow must be fulfilled today, day after tomorrow it runs the risk of being conveniently forgotten. Indeed so many tomorrows have come and gone without a leaf turning that today there is a lurking danger that people will work out their destiny through the compelled cult of their own 'dirty hands'. Words bandied about in marbled halls say much but fail to achieve as much."

The above mandate and goal of the Constitution would be a reality if only the law is enforced strictly. The march of law should match to protect the life and there should be factual improvement in the quality of life of the Dalits; equality of opportunity and of status, justice - social, economic and political to relieve them of their travails, tortures and tribulations endured for centuries due to historical reasons. The handicaps, disabilities and sufferings, restrictions or conditions to which they are subjected need eradication and redressed under rule of law by bridging the gaps by pragmatic interpretations. The Act not only prescribes penal offences but also accords civil and social rights as part of constitutional scheme. It requires to be enforced, interpreted and the evidence evaluated on the touch-stone of the constitutional creed and ethos and any negation would abrogate and abrogate the constitutional policy.

It is worth bearing in mind a stark lesson that the doctrine of "separate but equal" profounded in *plassey v. Ferguson*, 41 Lawyers' Edition 356 (163 US 537), depleted the glorious contents of 14th Amendment to integrate the Negroes into the main-stream of Americal Society till it was buried fathom deep in *Oliver Brown v. Board of Education of Topeka*, 98 Lawyers' Edition 873 (347 US 483) 1964.

M.P. Jain in his *Indian Constitutional Law* 4th Edition 1987 at p.522 stated that 'Art.17 read with Art.15(2) protects an individual from discriminatory conduct not only on the part of the State but even on the part of the private persons in certain situations. The Supreme Court has stated that whenever any fundamental right like Art.17 is violated by a private individual, it is the constitutional obligation of the state to take necessary steps to interdic such violation and ensure observance of the fundamental

A right by the private individual who is the victim of transgression. The State is under a constitutional obligation to see that there is no violation of the fundamental rights of such person'.

B The ratio in *Joseph Lee Jones v. Alfrade H Mayer Co.*, 20 Lawyers' Edition 2d 1189 (392 US 409) 1968, that the plaintiff, a Negro could be entitled by an injunction to purchase a house from a white who denied sale on the ground of colour barrier and statute 42 USC Art. 1982 would apply to both a state and private acts of denial of equality is an instance to show that denial of civil rights on grounds of untouchability (Negro's segregation) is actionable at law.

C The Amended Act adopted the definition of 'Scheduled Castes' as defined in Art. 466(24) read with Art. 341 of the Constitution. By Clause (bd) of Sec. 2 of the Act, Civil Rights is defined to mean "any right accruing to a person by reason of the abolition to untouchability by Art. 17 of the Constitution". Sec.3 prescribes punishment to enforce religious disability on the ground of untouchability. Sec.4 prescribes punishment to enforce social disability on the ground of untouchability with regard to the enumerated offences and clause (iv) relevant for the purpose of this case postulates that whoever, on the ground of untouchability, enforce against any person any disability with regard to the use of or access to.....water taps....., shall be punishable with an imprisonment for a term of not less than one month and not more than six months and also with a fine which shall not be less than Rs.100 and not more than Rs.500. Section 7 prescribes punishment that (1) whoever prevents any person from exercising any right by reasons of abolition of untouchability under Art.17 of the Constitution; (b) obstruct or cause or attempt to cause obstruction to any person in the exercise of any such right, by reason of his having exercising any such right, shall be punishable with imprisonment for a term of not less than one month and not more than six months and also with a fine which shall be not less than Rs.100 and not more than Rs.500. The other provisions are not relevant, hence omitted. The intention appears to be that

G the operation of law to be deterrent.

H When the mandate of Art.17 was being breached with impunity, and commission of atrocities on Dalits and Tribes continued unabated, to stamp out the evil, the Parliament stepped in and made Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 with stringent

provisions to eradicate those offences with speedy trial. Relief and rehabilitation of the victims of such offence and related matters. The details thereof are not germane for discussion. A

Judiciary acts as a bastian of the freedom and of the rights of the people. Jawaharlal Nehru, the Architect of Modern India as early as in 1944 stated that the spirit of the age is in favour of equality though the practice denies it almost everywhere, yet the spirit of the age triumphs. The judge must be atune with the spirit of his/her times. Power of judicial review, a constituent power has, therefore, been conferred upon the judiciary which constitutes one of the most important and potent weapons to protect the citizens against violation of social, legal or constitutional rights. The judges are participants in the living stream of national life, steering the law between the dangers of rigidity on the one hand and formlessness on the other hand in the seamless web of life. The great tides and currents which engulf the rest of the men do not turn aside in their course and pass the judges idly bye. Law should subserve social purpose. Judge must be a jurist endowing with the legislator's wisdom, historian's search for truth, prophet's vision, capacity to respond to the needs of the present, resilience to cope with the demands of the future and to decide objectively disengaging himself/herself from every personal influence or predilictions. Therefore, the Judges would adopt purposive interpretation of the dynamic concepts of the Constitution and the Act with its interpretative armoury to articulate the felt necessities of the time. The Judge must also bear in mind that social legislation is not a document for fastidious dialects but means of ordering in the life of the people. To construe law one must enter into its spirit, its setting and history. Law should be capable of expanding freedoms of the people and the legal order can, weighed with utmost equal care, be made to provide the underpinning of the highly inequitable social order. The power of judicial review must, therefore, be exercised with insight into social values to supplement the changing social needs. The existing social inequalities or imbalances are to be removed and social order readjusted through rule of law, lest the force of violent cult gain ugly triumph. Judges are summoned to the duty of shaping the progress of the law to consolidate society and grant access to the Dalits and Tribes to public means or places dedicated to public use or places of amenities open to public etc. The law which is the resultant product is not found but made. Public policy of law, as determined by new conditions, would enable the courts to recast the changing conceptions of social values H

A of yester years yielding place to the changed conditions and environment to the common good. The courts are to search for light from among the social elements of every kind that are the living forces behind the factors they deal with. By judicial review, the glorious contents and the trite realisation in the constitutional words of width must be made vocal and audible giving them continuity of life, expression and force when they might otherwise be forgotten or ignored in the heat of moment or under sway of passions of emotion remain aroused, that the rational faculties get befogged and the people are addicted to take immediate for eternal, the transitory for the permanent and the ephemeral for the timeless. It is in such surging situation the presence and consciousness and the restraining external force by judicial review ensures stability and progress of the Society. Judiciary does not forsake the ideals enshrined in the constitution, but make them meaningful and make the people realise and enjoy the rights.

D The Judges, therefore, should respond to the human situations to meet the felt necessities of the time and social needs, make meaningful the right to life and give effect to the constitution and the will of the Legislature. This court as the vehicle of transforming the nation's life should respond to the nation's needs and to interpret the law with pragmatism to further public welfare to make the constitutional animations a reality.

E Common sense is always served in the court's ceaseless striving as a voice of reason to maintain the blend of change and continuity of order which is *sine quo non* for stability in the process of change in a parliamentary democracy. In interpreting the Act, the judge should be cognizant to and always keep at the back of his/her mind the constitutional goals and the purpose of the Act and interpret the provisions of the Act in the light thus shed to annihilate untouchability; to accord to the Dalits and the Tribes right to equality, social integration a fruition and make fraternity a reality.

G The thrust of Art. 17 and the Act is to liberate the society from blind and ritualistic adherence and traditional beliefs which lost all legal or moral base. It seeks to establish new ideal for society - equality to the Dalits, at par with general public, absence of disabilities, restrictions or prohibitions on grounds of caste or religion, availability of opportunities and a sense of being a participant in the main stream of national life.

H While the court, therefore, is to adopt the psychological approach,

reasonable doubt does not mean the mind of a doubting Thomas, nor vacillation, nor pusillanimity, nor deep seated prejudices or predilections covertly found in other walks of life. The application of the test of a reasonable man acting in similar circumstances and reasonable doubt of a reasonable man is the rule.

The learned Judge in appreciating the evidence of PW-1 to PW-4 appears to have fell into the trap of traditional mould and found doubt when none exists. The criminal law primarily concerns with social protection, prescribes rules of behaviour to be observed by all persons and punishes them for deviance, transgression or omission. *Mens rea* is not an essential ingredient in social legislations is the settled law. As stated by Justice Krishna Iyer in his "Social Mission of Law" at p.91 that, "the act may or may not be accompanied by guilty mind but for the sense of justice among the community, being ordinarily effective against individual, to leave it to the moral plane; the law makes intent, knowledge and degree of negligence an ingredient of the offence. But where social necessity demands from the angle of public welfare or because of the difficulty of proof of accused's mental stage, jurisprudence points dispensing with or of the onus of proof of *mens rea*." The learned Judge concentrated more on sequence or absence of parrot like repetition of ocular words spoken by illiterate persons or play upon words and sought consistence forsaking the sense it conveyed and the effect it produced in preventing PWs.1 to 4 and other Dalits to exercise the right to draw water from public borewell. The High Court gave the benefit of doubt when in fact, no such benefit does arise from evidence if considered in proper perspective nor exists to reach the finding of guilty. My brother has endeavoured to evaluate the evidence and found it to be acceptable. With respect I agree with my brother and there is nothing further to discuss on the evidence and I respectfully endorse his view.

Before concluding it is apposite to abstract the immortal speech which bears all time relevance and to the judiciary also by Dr. B.R. Ambedkar in the Constituent Assembly on November 25, 1949 thus:

"What we must do is not to be content with mere political democracy. We must make our political democracy a social democracy as well. Political democracy cannot last

A unless there lies at the base of it a social democracy. What
does social democracy mean? It means a way of life which
recognizes liberty equality and fraternity as the principles
of life. These principles - liberty, equality and fraternity -
B are not to be treated as separate items in a trinity. They
form a union of trinity in the sense that to divorce one
from the other is to defeat the very purpose of democracy.
Liberty cannot be divorced from equality, equality cannot
be divorced from liberty. Nor can liberty and equality be
divorced from fraternity. Without equality, liberty would
C produce the supremacy of the few over the many. Equality
without liberty would kill individual initiative. Without
fraternity, liberty and equality could not become a natural
course of things. It would require a constable to enforce
them. We must begin by acknowledging the fact that there
is complete absence of two things in Indian society. One
D of these is equality. On the social plane, we have in India
a society based on the principle of graded inequality,
which means elevation for some and degradation for
others. On the economic plane, we have a society in which
there are some who have immense wealth as against many
who live in abject poverty.

E
On 26th January, 1950, we are going to enter into a
life of contradictions. In politics we will have equality and
in social and economic life we will have inequality. In
politics we will be recognizing the principle of one man,
F one vote and one vote, one value, In our social and
economic life we shall, by reason of our social and
economic structure, continue to deny the principle of one
man, one value. How long shall we continue to life this
life of contradictions? How long shall we continue to deny
G equality in our social and economic life? If we continue
to deny it for long, we will do so only by putting our
political democracy in peril. We must remove this con-
tradiction at the earliest possible moment or else those
who suffer from inequality will blow up the structure of
political democracy which we have so labouriously built
H up."

This salutary message is the torch bearer and beacon light in the administration of the law under the act and other social legislations. A

Accordingly, I agree with my brother on the conviction and sentences imposed on the respondents and the appeal is accordingly allowed.

N.P.V.

Appeal allowed.