

CHAPTER – 3

**RELATION WITH SOCIAL
JUSTICE AND EQUALITY**

CHAPTER-III

RELATION WITH SOCIAL JUSTICE AND EQUALITY:

- The meaning and definition of social justice in the reference of the equality.

Social justice and equality before law and protection of India:

- Equality before the law is the result of rule of law:

Right to equality under article 14 to 18 of the constitution of India:

- The equality, liberty Axis: a Social, political paradigm of human development:

Constitutional vision of equality and social justice:

- Equality of opportunity in public employment and social justice:

Right to equality and reservation policy:

Global movement for disability equality:

Abolition of Untouchability brings social justice:

CHAPTER-III

RELATION WITH SOCIAL JUSTICE AND EQUALITY:

Social justice and equality are complementary to each other so that both should maintain their vitality. The constitution commands justice liberty, equality and fraternity as supreme values to usher in the egalitarian social economic and political democracy. Social justice equality and dignity of person are corner stone of social democracy. The concept of social justice which the democracy of India engrafted consists of diverse principles essential for the orderly growth and development of personality of every citizen. Rule of law therefore, is a potent instrument of social justice to bring about equality in results.¹³⁹

The concept of social justice can be studied under the following points.

- (a) Social justice and equality.
- (b) Social justice in social dynamics.
- (c) Social justice and law.
- (d) Social justice and political justice.

Here we can only discuss the first point¹⁴⁰.The concept of Social justice and Equality-

¹³⁹ Dr. K. P. Singh. "Supreme Court on human Rights and Social Justice"e 2001 Allahabad law agency p. 48.

¹⁴⁰ Dr. Mrs Mamta Roa "public Interest Litigation in India a Renaissance in Social Justice '2002 p. 42.

1. The meaning and Definition of social justice in the reference of the equality:

Socialist writer-define, social justice, in term of need. Need these two criteria can be put under to concepts of equality.

1. **Formal equality means** that law is treats everyone equal and does not favour anyone either because he belongs to the advantage section of the society or disadvantage section of the society-
2. **Concept of proportional equality**-Expects the state to take affirmative action in favors of disadvantage section of the society within the frame work of liberal democracy. Constitution of India, articles 14, 16.Equality-violation by grant of discretionary powers. The basic principal under laying Art.14 is that the law must be operating all people equally on all people under like circumstances. Every discretionary power is not necessarily discriminatory. Equality is not violated by mere conferment of discretionary power. It is violated by arbitrary exercise by those whom it conferred.¹⁴¹

In M.Nagraj v. Union of India.¹⁴²

Supreme Court held that, Social justice is one of the sub-divisions of the concept of justice. It is concerned with the distribution of benefits

¹⁴¹ AIR 2007 SC 87 P. 50

¹⁴² AIR 2007 SC p. 50

and burdens throughout a society as it results from social institutions, property system public organization etc. The concept of social justice is not, limited only to directive principles. There can be no justice without equality. Article 14 guarantees the fundamental right to equality before the law on all persons. Great social injustice resulted from treating sections of Hindu community as untouchable and therefore Article 17 abolished untouchability. Article 25 permitted the state to make any law providing for throwing open all public Hindu religions temple to untouchables. There for provision of part III also prove for political and social justice.

2. Social justice and equality before law and equal protection of law-

1. A perspective for article-14: The Indian constitution doctrine of equality before the law is a teacher plant of recent origin. It seed was planted in Article-14 of Indian constitution .which come into the operation on the 26th January 1950. The framers of our constitution declared in simple language—

“The state shall not deny to any person equality before the law or equal protection of the laws with in the territory of India “¹⁴³

¹⁴³ Article 14 of the constitution of India

Banarse Das v. state of Uttar parades¹⁴⁴ Chief justice Das was a holding that article 16 is an instance of the application of general rule of equality. Lay down in article 14 with special reference to the opportunity of employment and appointment under government. A similar approach to article 15 as to article 16 in the Banarsi Das case is possible. To make men equal before the law and to give them equal protection of laws has been the ideal of every inspired constitution.

2. Equality before the law is the result of rule of law: The term rule of law means the principal of legality which refers to a government based on principal of law and not of men in this sense the concept of rule of law is opposed to arbitrary power. Rule of law is one of the basic principal of the English constitution. This doctrine has been enshrined in the constitution of USA and constitution of India as well. The entire basis of administrative law is the concept of rule of law.¹⁴⁵

A. Doctrine rule of law-: The term “Rule of Law” is derived from French phrase (La principe de Legalite) (The principle of legality) which refers to a government based on principal of law and not of men. In this sense’ the concept of a principal de legality’ was opposed to arbitrary power.¹⁴⁶

¹⁴⁴ . AIR 1965 SC p 357.

¹⁴⁵ Article 14 of Indian constitution.

¹⁴⁶ A Country may have the constitution, But not necessarily constitutionalism for example a country with dictatorship, where the dictators word is law can be said to have a constitution But not constitution". Constitutionalism can notes in essence limited government or limitation of charlesh. H. M.LIL wairh constitutionalism Ancient and Modern P. 30

B. Dicey meaning rule of law-: Dicey attributed the following three meaning to the doctrine—

1. Supremacy of rule of law
2. Equality before law and
3. Predominance of legal spirit.

1. Supremacy of rule law- Dicey states that rule of law means the absolute supremacy of regular law as opposed the influence of arbitrary power or wide discretionary power. It excludes the existence of 'arbitrariness of prerogative power' or even wide discretionary authority on the part of government.

2. Equality before law and social justice--Explaining the second postulate of the doctrine of rule of law, Dicey says that—there must be equality before the law or equal subjection of all classes to the ordinary law of land administered by the ordinary law courts. In England he maintained all people were subjected, to one and the same.

3. Predominance of legal spirit-Explaining the third postulate dicey says that the general principal of the constitution are the result of judicial decision of the court in England. Those rights are the result of judicial decision in concrete cases which have actually arisen

between the parties. In this way (rule of law) postulates judicial supremacy.¹⁴⁷

C. Criticism of Dicey definition: Concept of rule of law has been criticized mainly on the ground of his notion of equality before law which according to him, negates the existence of administrative law. Thus Dicey failed to distinguish arbitrary power from discretionary power. Though arbitrary power is inconsistent with the concept of **Rule of law**, discretionary power is not, if it is properly exercised. The modern welfare state cannot work properly without exercising discretionary power.

D. Modern concept rule of law—The modern concept of the rule of law is fairly wide. Davis gives seven principle meanings of “The rule of law –

- ❖ Law and order
- ❖ Fixed rules
- ❖ Elimination of discretion
- ❖ Due process of law or fairness
- ❖ Observance of the principle of Natural Justice
- ❖ Preference for judges and ordinary courts of law
- ❖ Judicial review of administrative action ¹⁴⁸

E. Rule of law under the Indian constitution—In India, the constitution is supreme. The preamble of our constitution clearly sets out the principle of rule of law. When it lays down the objective of social, economic and

¹⁴⁷ ADM Jabalpur v. State of U.P. 1976 2. SC. 52

¹⁴⁸ Dicey "Introduction to the study of Law of Constitution : Chapter 4 p. 104

political justice. Equality of states and opportunity and fraternity and dignity of individuals in India part III of the constitution lies down. The fundamentals rights guaranteed to every citizen of the country. These rights are justice able under Article 32 and 226 of the constitution which ensure them a protection from any legislative or executive encroachments. Law including ordinance bye law rules, regulation notification, customs or usages having the force of the law must conform to the requirements of the constitutional provision where they do not conform they will be declared void Article 13 , and other relevant article of constitution.¹⁴⁹

In Smt. Indira Nehru v. Raj Narain¹⁵⁰

Mathew .j stated that according to the majority opinion in the Bharti,s case-Rule of law is a basic structure of the constitution a part from democracy.Following features'are the basic structure of the constitution. Rule of law.

Judicial review.

Democracy'

Which implies free and fair election. Every organ of the administration is regulated by the (Rule of law).The Indian constitution embodies the modern concept (rule of law) exist in this country by virtue of the following features:

¹⁴⁹ Dr. J.J.R. Upadhyay "Administrative Law 7th Edition 2006 p. 31

¹⁵⁰ AIR 1975 SC 2299

- i. supremacy of the constitution.¹⁵¹
- ii. Constitutional requirement of equality.
- iii. Constitutional guarantee and judicial enforcement of right.
- iv. Rule of law as a legal concept.
- v. Rule of a law as feature of basic structure.
- vi. Elimination of arbitrariness and of discretion.
- .vii National policy of reservation for backward classes and constitutional validity of creamy layer.
- Viii Pervasiveness of the concept of rule of law.¹⁵²

F. The New Horizons of Rule of law- The recent expansion of rule of law in every field of administrative functioning has assigned. It a place of special significance in the Indian administrative law Vis a Vis—operation of administrative power, in several cases emphasized upon the need of fair and just procedure adequate safeguards against any executive encroachment on personal liberty. Free legal aid to the poor and speedy trial in criminal cases as necessary adjusts to rule of law.¹⁵³

Bachchan Singh v. S State of Punjab.¹⁵⁴ Mr. Justice Bhagwati explains fully the significance of rule of law in following words- . The rule of law Excludes arbitrariness, it postulated is Intelligence without passion, and

¹⁵¹ A.K. Gopalon v. State of Madaras AIR 1950 SC 27

¹⁵² Veena Sethi v. State of Bihar AIR 1983 SC 339.

¹⁵³ Manka Gandhi V. union of India A.I.R 1976 S.C 597

¹⁵⁴ A.I.R 1980 SC1325

reason free from desire. Where ever we find arbitrariness or unreasonableness. There is denial of the rule of law.

In Peoples Union for democratic Rights v. Union of India¹⁵⁵

The court upholding the public interest litigation as one of the necessary corollaries of rule of law, observed that the public interest litigation is intended to promote and vindicate public interest litigation. Which demands are poor, the violation of constitution and legal rights of large number of people who ignorant or in a socially and economically disadvantaged position, should not go to the court? That would be destructive of the rule of law. Equality, rule of law, judicial review and separation of power forms part of the basic structure of the constitution. Each of these concepts is intimately connected. There can be no rule of law. **If there is no equality before the law.** These would be meaningless. If the violation was not subject to judicial review. All these would be redundant. If the legislative, executive and judicial power are vested in one organ.¹⁵⁶

Equality before the law the result of rule of law.

Equality Before law-“ the state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” ¹⁵⁷

¹⁵⁵ AIR 1982 SC 1473.

¹⁵⁶ Rule of law in Indian constitution ‘ P.L.T. June 2009 p88

¹⁵⁷ Article 14 of Indian the constitution

The doctrine of equality has many facts. It is a dynamic, and an evolving concept. Its main facts, relevant to Indian society, have been referred in the preamble and the articles under the sub-heading “Right to equality”—(Arts. 14 to 18). In shorts, the goal is “equality of status and of opportunity”. Arts.14 to 18 must be understood not merely with reference to what they say but also in right of the several article in part IV (directive principal of state policy.“ Justice, Social, Economic and political”, is the total of the aspiration incorporated in part IV. Art.14 enjoins upon the state not to any person “Equality before the law” or “the equal protection of the laws” within territory of India. Most constitution speaks of either “equality before the law” or “the equal protection of laws”. (Art.7 of the universal declaration of Human Rights,1948, of course ,declares that, all are equal before the law and are entitled without any discrimination to equal protection of laws” The content and sweep of the these two concepts is not the same though there may be much in common. The content of the expression “equality before the law “is illustrated not only by Arts.15 to 18 but also by the several Articles in part iv, in particular, Arts\38,39,39A,41 and 46. Among others the concept of equality before the law contemplates minimizing the inequalities in income and eliminating the inequalities in status, Facilities and opportunities not only amongst individuals but also amongst group of people, securing adequate means of livelihood to its citizens and to promote with special care the educational and economic interests of the weaker section of the people, including in

particular the scheduled castes and scheduled tribes and to protect them from social injustice and all forms of exploitation.¹⁵⁸

Natural Justice- One of the cardinal principal of natural justice is **Nemo debate ease judex propria cause'** (no man shall be a judge in his own cause). The deciding authority must be impartial and without bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of Supreme Court In the said case, a departmental enquiry was held against an employee. One of the witnesses against the employee turned hostile. The officers holding the enquiry then left the enquiry gave evidence against the employee and thereafter resumed to complete the enquiry and passed the order of dismissal. Supreme Court quashed the order of dismissal by holding inter alia that rule of natural justice were grievously violated.¹⁵⁹

Equality clause—Forbids discrimination-It is well settle and cannot be dispute that art.14 of the constitution guarantees equality before the law and confers equal protection of laws. It prohibits the states from denying persons or class of person equal treatment; provided they are equal and are similarly situated. It however, does not forbid classification. In other words. What Art.14 prohibits is discrimination and not classification if

¹⁵⁸ Rule of law in Indian constitution political and Law Times June 2009 issue 6. P 88

¹⁵⁹ Ratan Lal v. Managing Committee Dr. Hari Ram AIR 1993 S.C p 2161

otherwise such classification is legal, valid and reasonable.¹⁶⁰ Article 14 of the constitution incorporates the doctrine of equality before law and equal protection of laws. this doctrine means the denial of any special privilege in favour of any individual by reason of the birth ,sex race or the like by social justice ,we means social equality . To bring social equality requires great changes in our social environment and our social institution .if the sentiment of social equality is carefully and wisely cultivated. It sure to make a considerable addition to the realization of social justice when social justice is denied to certain section of the people, laws are enacted to bring balance. These laws are called social legislation, social legislation try to remove inequalities on to benefit the wholly community.¹⁶¹

4. Right to equality under article 14to18 of the constitution of India

Article 14 to18 of the constitution guarantee the equality to every citizen of India. Article 14 embodies the general. Principle of equality before law and prohibits unreasonable discrimination between people. Article 14 embodies the India of equality expressed in the preamble of the constitution. The succeeding articles -15, 16, 17 & 18 laid down specific application of the general rule laid down in article-14.**Article-15** relates to the prohibition of discrimination on the ground of religion, race, cast,

¹⁶⁰ State of Bihar v. Lectures association AIR 2007 S.C 1950

¹⁶¹ Jendendra Mishra "Right to Equality and Gender Justice "AIR 2004 Journal . p. 52.

sex or place of birth. **Article-16** guarantees equality of opportunity in of public employment.

Article-17 abolishes untouchability.¹⁶²

Equality before the law.-Article-14 declares that the state shall not deny to any person. **1. Equality before law: 2. Equal protection of laws:**

Both these expression have however, been used in the universal declaration of human rights.

The first expression Equality before the law Is of English origin and second expression has been taken from America constitution; both these expression aim to establish what is called “equality of status” in the preamble of constitution to get social justice under the constitution of India. But the concept of equality does not means absolute equality among human being which is physically not possible to achieve. “Equality before the law means that among equals and should be equally administered, that like should be treated alike. The right to sue and be sued to prosecuted for the same kind of action, should be same for all citizen , of full of age and understanding without distinction of race religion, wealth social status or political influence”¹⁶³

2. Equal protection of laws—the second expression “equal protection laws” is based on the last clause of the section of fourteen, amendment to the America constitution, which direct the equal protection shall be

¹⁶² Right to equality. Article 14,15,16,17,of the constitution

¹⁶³ Article 14 of the Indian constitution

secured to all person within the territorial jurisdiction of the union in the enjoyment of their rights and privatizes without discrimination. It is more positive concept, impaling equality of treatment in equal circumstances.¹⁶⁴ Equal law should be applied to all in the same situation, and there should be no discrimination one person and another. As regard the subject's matter of the legislation there position is same. Thus the rule is that the like should be treated a like and not that unlike should be treated¹⁶⁵

The scope right to equality under article 14 has been considerable restricted by the 42th amendment act provides that law made by the states for implementing the directive principal of state policy contained in clause (b) or (c) of article 14 to bring social justice or to provide social justice to the citizen of India. Such laws will thus be an exception to article 14 of the constitution of India.¹⁶⁶ The court held that equality guaranteed against arbitrariness to provide social justice. Judiciary-in 2006 re establishment of rule of law. ¹⁶⁷In the case of priyadarshini mattoo, Nitin katara murder case and best bakery case, Bilikis Bano case was five month pregnant when she was gag raped and her three half years daughter was killed. Then the police did not record her F.I.R one way out could be for judge to be given a more active role in procuring evidence.

¹⁶⁴ pandy J.N. "constitutional law of India 43rd edition 2006 p. 70

¹⁶⁵ State of west bangal v. Anware Ali serkar A.I.R 1952 SC75

¹⁶⁶ Sanjeeve Cok mfg. v. Bharat Cooking Coal Ltd. 1983 Co.SCC 45

¹⁶⁷ State of Kerala v. K. Persad and other 2007 P. 18

In these cases for greater judicial Activism is already being recognized by the law judiciary for the apply rule of law.

5. The equality, liberty Axis: A Social, political paradigm of human development. In contradistinction with this liberty and equality are the foundations of a just social order. The history of various civilizations has been an onward march towards securing human dignity, best expressed in the struggle for justice, freedom and equality. The struggle against oppression in justice and discrimination has been a common thread in all society. Likewise, the progress towards constitutional governance and all rule of law has been greatly influenced by men's desire that has fullest development can be possible only when socio-political order is ordained by equality and liberty.¹⁶⁸

The most basic of these human rights are equality, liberty, dignity and socio-economic justice. These are basic human rights because it is only by virtue of these, that human right being become entitled to participate in enjoyment of economic, social, political, and cultural development. It would also be necessary here to point out that human development has been understood in two ways – first, the individual happiness and well being, spiritual and intellectual development, and the second, in its social context in which availability of opportunity and the of 'social justice' and 'distributive justice' are more important, which facilitate or ensure the

¹⁶⁸ Golaknath v. State of Punjab AIR 1967 SC 1673

first. The first can also be understood as utilitarian concept and the second as protective principles of social justice. In other words equality and liberty in all its facts constitute the cornerstone of human development. Human development signifies broadening of human freedoms and dignity and also creating necessary social arrangements for supporting or facilitating these freedoms and dignity. Before we discuss the international commitment in the form of UN Charter it is necessary to point out that viewed from a developmental perspective, equality and liberty would compromise the following.

1. Development of human personality.
2. Individual empowerment of weaker sections of the society.
3. Freedom from discrimination and freedom from exploitation and injustices.
4. Facilitating opportunities and creating social arrangements conducive

The Greek city-states rights like **isonomia** (equality before the law), **isotimia** (equal respect for all) and **isogoria** (equality freedom of speech). Social justice to ensure that basic entitlements of everybody become a reality. Social justice is essentially a paradigm of human development. Primarily, it is based on the idea that all men are equal in society and are equally entitled to basic rights, opportunities and freedoms without distinction of religion, race, caste, colour or creed. It seeks to fulfill three

distinct urges of the people, viz. liberty, equality and fraternity as can be seen from the preamble philosophy of the constitution. In other words it is both an end means to achieve all round happiness and development through equality and freedoms.¹⁶⁹

6. Constitutional vision equality and social justice:

The quest for social justice began with the famous slogan of the French revolution “liberty, equality and fraternity “although seeds of social justice may be found the theory of distributive justice propounded by Aristotle. The theory demanded a fair distribution of the social benefits and burdens among the members of the community. Almost all philosophers have universally accepted this. Liberty, equality and fraternity are the three basic principal of social justice. ¹⁷⁰The principal of equality before law and equal protection of law necessitate that socio-economic inequalities and disabilities need to be redressed to bring socially disadvantageous and economically exploited at par with other.¹⁷¹

A. Article 15 (1) No discrimination on grounds of religion race caste sex place of birth or any of them:

The first clause of article 15-: Directs the state not discriminate against a citizen Article 15(1) directs the state not to discriminate against a citizen

¹⁶⁹ A United National Human right question and answer 1987

¹⁷⁰ John Rawls “Theory of Justice” (1960)10

¹⁷¹ Crown A human works, v. workmen AIR 1958 SC 30

on the grounds only of religion race caste, sex or place of birth or any of them. The word discrimination means to make from others.¹⁷²

Social inequality assumes a particularly reprehensible form in relation to the backward classes and communities which are treated as untouchable, and so the problem of social justice is as urgent and important in India as the problem of economic justice Social justice in a comprehensive sense so as include both economic justice and social justice. The concept of social justice thus takes within its sweep the objective of removing all inequalities and affording equal opportunities to all citizens in social affairs as well as economic activities¹⁷³.

Kathi Ranning v. state of saurastra¹⁷⁴

When the discrimination is based upon one of the grounds mention in article 15, the reasonableness of the classification will be tested under article 14. Article 15 is available to citizen only not every person .the democratic principle of equality which in fact is equality among the powerful is only a formal equality .The real equality consists in equality all of the members of the society. It will be observed as a matter of habit and once its observation becomes a habit, social justice will spread automatically.

¹⁷² Article 15 of the constitution of India's

¹⁷³ Dr. Gajendragdkar P. B". Law and Liberty and Social Justice" 1977P. 77- 79

¹⁷⁴ AIR 1952 SC 123.

B. Clause (2)15 is a specific application of the general prohibition contained in article 15 (1) –

A. Access to shop, public restaurants, hotels, and place of public entertainment.

B .The use of wells tanks bath, roads and place of public resort, maintained wholly or partly out of the state funds or dedicated to the use of the general public.

The object of article 15(2) is social justice and equality:-

The object of article 15(2) is to eradicate the abuse of Hindu social system and to herald a united nation the madras removal of civil disabilities act punish social disabilities. No law, custom or usage could authorize any person to prevent any harizon depressed classes or the like form having access to the public places mentioned to act. ¹⁷⁵Article 46 of the constitution states that -The state shall promote with special care the educational and economic interest of the weaker section of the people, and in particular, of the scheduled castes and scheduled tribes, and state shall protect them from social in justice and all form of exploitation. The trinity of articles 14, 15, and 16, enshrined the concept of equality.¹⁷⁶

14. Article 15 (3) special provisions for women &children:-

This clause is an exception of clause 1, 2, of article 15. **It says that nothing in this article shall prevent them from making any special**

¹⁷⁵ R.G Chaturvadi. .”Natural and Social Justice” Second edition 1975 P. 475.

¹⁷⁶ Article 46 of the constitution of India

provision for women & children. Women & children required special treatment on account of their very nature.¹⁷⁷ Thus article 42 women workers can be given Special maternity relief a law to this effect will not infringe article 15(1) so it would not be violation of article 15. If educational institutions are established by the state exclusively for women. The reservations of seats for women in college do not offend against 15(1).¹⁷⁸ **Section 497 of IPC.** Which only punished man for adultery and exempts the women from Punishment even though she may be equal guilty of an abettor was held to be valid. Since the classification was not based on the ground of sex alone.¹⁷⁹

I. The constitution of India and women empowerment: The constitution of India is a basic document which provides for women empowerment within the framework of the plenary provision of article 14, 15(3), 21, 39a, 51a and preamble. The courts always try to interpret the cases which are detrimental to women within the area of social justice with these articles. The right to elimination of gender based discrimination so as to attain, economic empowerment, from part of universal human rights.¹⁸⁰

¹⁷⁷ Article 15 (3) of the Indian constitution

¹⁷⁸ Article 42 of the Indian constitution

¹⁷⁹ Yusuf Abdul Aziz v. State of Bombay AIR 1954 SC 321

¹⁸⁰ Amartya Sen and Nussbaum "Capabilities" and Social Justice" In the light of Justice front line Jan - 2 - 2009.p15

Right of children to free and compulsory education bill-2009 it is a most important act for welfare of the children. It enforced date is 10 **APR** 2010.

II. Due to the weak physical position of women-: However, the provision of non discrimination on this account do not prevent the making any special provision for and children. The same provision has been in article 15 (3). Which empowers the state to make special provision for them? Thus it would not be violation of article 15, if institution is set up by the state exclusively for, women or in public conveyances. The main object of the article 15(3) is based on, protective discrimination. Keeping in the view physical position of women. ¹⁸¹

III. Section 6 of the Hindu succession act amendment act 2005)

- I.** Section 6 devolution of interest in coparcenary property.
- II.** On the commencement of Hindu succession (amendment act (2005) in a joint Hindu family governed by the mitakshara law the daughter of a coparcener shall be by birth become a coparcener in her own right in same manner, as the son.
- III.** Have the same rights in the coparcenary property as she would have had if she had son.
- IV.** Be subjected to the same liabilities in respect of the said coparcenary property as that son. The daughter is allotted the same

¹⁸¹ Miss Sheetal Mishra "Gender Justice. The Constitutional perspectives and Judicial Approach AIR 2006 APR Journal P. 55

share as is allotted to a son.¹⁸²The amended gives the right to daughters from 2005 and merely to daughters who were born after 2005.¹⁸³

V. Section 14 of Hindu succession 1956-: Converting the women's limited ownership of property into full ownership has been found in pursuance of article 15(3).

IV. Reservation for women in local bodies:

Reservation for women in government jobs and private institutions would amount to positive discrimination. Reservation for women would become a populist tool at the hands of women powers of providing opportunities to in male dominated society is equally strong.¹⁸⁴The parliament has succeeded in its efforts to provide for reservation seat in election to the Panchayats and municipalities have provided in article 243a to 243t of the constitution of part 9 and part 9a have been added to the constitution by 73rd 74th amendment acts with article 243a to 243d and article 243p to 243z. At present 33% reservation has been provided for women in Panchayats and Municipalities local bodies According to article 243d.¹⁸⁵ Only few states which provided 50% reservation such Bihar. Not less than one third including the number of seats reserved for women

¹⁸² Dr Paras. Diwan "Modern Hindu Law" Twelfth Edition 2009p.401.

¹⁸³ Santilala Sahu v. Sabitri Sahu 2008 Orissa 250

¹⁸⁴ Sheetal Mishra l "Gender Justice the Constitutional perspective and Judicial Approach" AIR 2006. APR Journal 53.

¹⁸⁵ R.D. Upadhyay v. State of A.P. AIR 2006 SC p. 2 4997.

belonging to the scheduled casts. And scheduled tribes of the totals number of seats to be filled up by direct election in every panchayats shall be reserved for women and such seats may be allocated by rotation to different continuing in a panchayat. Article 243t of the constitution provides similar provision for reservation seats for women in direct election in every municipality. Therefore 33% of seats for women candidates to hold office and perform all public function at the panchayat and municipality level are the constitutional mandate. Another constitution amendment 108 constitutional amendment bill reserving 33% in parliament and state legislature in the pipeline.¹⁸⁶

V. In India there are a numbers of laws of women empowerment: At empowerment of women in the areas of person labour services and criminal, social and economical matters. The constitution of India guarantees equality for women. It would be proper to refer some of the most important legislations pertaining to empowerment of to bring social justice. Because the principal of gender equality is enshrined in the preamble of the constitution of India 1950.

- ❖ Indian penal code 1860.
- ❖ Hindu succession act 1956
- ❖ Hindu minority and guardianship act 1956.
- ❖ Hindu marriage act 1955.

¹⁸⁶Kamaludin Khan "constitution of India and women Empowerment www.4/10/2009.

- ❖ The dowry prohibitions act 1961.
- ❖ The Muslim women protection of right on divorce act 1986.
- ❖ The equal remuneration act 1976.
- ❖ The maternity benefit act 1961.
- ❖ The medical termination of pregnancy act 1971.
- ❖ The child marriage restraint act 1976.
- ❖ Immoral trafficking prevention act 1986.
- ❖ The prenatal diagnostic technique (regulation and prevention of measure act 1994.
- ❖ The protection of women from domestic violence act 2005.

Article 21-A inserted by 86th constitutional amendment 2002

provides for free and compulsory education to all children of the age six to fourteen year.

The other provision of the part 111 that may be noted are article 14, 21, 23, 24 . We may also note some provision of part IV of the constitution article 39 (e) directs the state to ensure that health and strength of worker men and women tender age of the children are not abused and that citizens

Are not forced by economical necessity to enter avocation unsuited to their age or strength article Article 39(f) direct the state to ensure that children are given opportunity and facilities to develop in a healthy manner & in condition of freedom and dignity and that childhood and

youth are protected against exploitation. Article-42 provides that the state shall make provision for securing just and human condition of works and maternity relief.¹⁸⁷ Educational and economic interest of weaker section of the people and in particular of the scheduled Tribes and shall protect them from social injustice and all forms of exploitation.¹⁸⁸

VI. Present position of women in education area:

The principle of equality as one of the milestones has been embodied in the preamble of the constitution of India. With respect of women, the constitution assures that there shall be equality of opportunity for every citizen in fields of education and employment, and no one shall be discrimination against on the basis of sex. And nothing shall prevent the state from making any special provision for women. In order to achieve the goal of gender equality and to provide gender justice to women the government of India has initiated several programmes for empowering women and to this effect the national commission for women was set –up. In 1990 by an act of the parliament with the mandate to monitor to implementation of policies and programs for women. The empowering of women through education has been primary concern of civil society .through successive five year's plans. The government of India has also envisaged upliftment of women through education.¹⁸⁹

¹⁸⁷ N. Karia "Law "Social Justice and Social Changes" AIR 2001 V. 88 journal p 189.

¹⁸⁸ Preeti. Mishra" Gender Justice Some issues" AIR 2001 Vol. 88.APR Journal p.15

¹⁸⁹ K.R. Gopinathan Nair v. Senior Inspector Special Sales Tax officer of Co-operative Societies Ltd AIR 1987 Kerala 167

Swami Vivekananda had aptly remarked-“Just as bird could not fly with one wing only, a nation would not march forward if the women are left behind”.

VII. Special provisions for children article 15(3) and provision for early childhood care and education to children below the age of six years-: Article 45 required the state to make provision within ten years for free and compulsory education for all children until they complete the age of 14 years, the object was to abolish illiteracy from country. The Supreme Court held that the right to education up to the age of 14 years is a fundamental right within the meaning of article 21, of the constitution. But there after the obligation of the state to provide education is subject to the limits of its economic capacity. The right to education flows directly from right to life.¹⁹⁰

Right to education as a fundamental rights:

The constitution (86th Constitution Amendment) act-2002 has added a new article 21-A-after article 21 and has made education for all children of the age of 6 to 14, a fundamental right. It provides that “*The state shall provide free and compulsory education to all children of the age of 6 to 14 years, in such manner as state may by law determine*”¹⁹¹.

¹⁹⁰ Uhnikrishanan, v. State of A.P. 1993 SCC 645.

¹⁹¹ 86 the constitution amendment act) 2002

D. Article 15(4) special provision for advancement of backward classes:

It is another exception of article 15 (1) (2) it was added 1st constitutional amendment 1951, as result of the decision of these case Madras high courts had reserved seat in medical and engineering colleges for different communities on the basis of the religion race caste to promote the social justice .justice for all section s for all the people as required by article 46 of the directive principle of state policy cannot be override.

Who are socially and educationally backward classes? ¹⁹²

In Balaji v.state of Massore ¹⁹³

In this case Supreme Court held that the sub classification made by the order between backward and more backward classes was not justified under article 15(4) .backwardness as envisaged by article 15(4). Must be both social and educational. And neither social nor educational for the schedule casts and scheduled tribes. Thus under clause 15(4) two things are determined.

- 1- Who are socially and educationally backward?
- 2- What is the limitation of reservation?

¹⁹² State of Madras v.champakam Dorianjan A.I.R 1951S.C 226

¹⁹³ AIR 1963 SC 449.

India Sawhney v. union of India 1993 or Mandal commission case.¹⁹⁴

S.C held that the sub classification of backward classes in to backward and more backward classes for the purpose of 15(4) can be done. But as a result of sub classification of reservation cannot exceed more than 50% both caste and poverty is relevant in determining the backwardness of the citizen. In this case the Supreme Court held that scheduled caste candidates who migrated from other state are equally entitled together benefit of reservation on other state or union territory¹⁹⁵.

P.A Inamdar v. state of Maharashtra and others¹⁹⁶

The Supreme Court held that the state cannot restrict or compel in private unaided institution for of any category i.e. O. B. C, S.Cs /S Ts. To remove the of this decision the parliament has made 93rd constitutional (amendment) 2005. This amendment added a new clause (5) in article 15. clause 5 nothing in this article or sub clause (g) of article 19 shall prevent the state from making any special by law for the advancement of any socially and educationally backward classes of citizens or for as such special provision relates to their admission to educational institution whether aided or unaided by the state, other than the minority educational institutional reoffered to the clause (1) article 30.

¹⁹⁴ AIR 1993 SC 477

¹⁹⁵ Puspa and other v. Siva Charan margavellers 2005 SC p.1

¹⁹⁶ AIR 2005 SC 3226.

Supreme Court on¹⁹⁷⁻ July 28, 2007 declared the order of Orissa govt. unconstitutional which enhance the reservation 65.6% in govt. employment.

The modern concept of equality consists in to the spirit to uplift the down trodden to improve the frustrated, to raise the suppressed and to advance the backward. Equality consists in bringing those at par whose levels of consciences have been law either by tradition or by treatment. The assertion of dignity of the individual are possible any when the monopoly over opportunities is quashed. Equality of opportunity is therefore, corollary of the equality of status. Social justice has to provide equality of opportunities to those whom such opportunities had so far denied. Equality of opportunity can have a meaning only when consciousness and grasp of such opportunities is facilities.¹⁹⁸

7. Equality of opportunity in public employment and social justice:

I. Guarantees equality of opportunity for all citizen- *There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the state.* ¹⁹⁹

¹⁹⁷ Batch of petitioners v. State of Orissa 2007 SC Jul 28.

¹⁹⁸ R.G. Chaturvadi "Natural and Social Justice II Edition 1975 P. 475

¹⁹⁹ Article 16 (1). Of the constitution of India

II. Nothing in this Article shall prevent parliament from making any Law:

Nothing in this Article shall prevent parliament from making any law prescribing in regard to class or classes of employment or appointment to an office .²⁰⁰

III. Nothing this Article shall prevent the state making any provision:

- (I) For the Reservation of Appointments or posts.
- (ii) In favour of any Backward-class of citizens.
- (iv) Which, in the opinion of state, is not adequately represented in the services under the state? ²⁰¹

IV. Reservation in promotion within consequential seniority in any class: Nothing in this Article shall prevent the state from making any provision for reservation. In matters of promotion, within consequential seniority to any class or classes of posts in the services under the in favour of scheduled castes and the scheduled tribes which the opinion of the states, are not adequately Represented in the services under the state. ²⁰²

Carry forward rule: It was added by 81th constitutional amendment Article 2000 Which says the vacancies which could not be filled up in the previous years? Shall be treated as a separate class of vacancies and

²⁰⁰ Article 16(2) of the Indian constitution

²⁰¹ Article 16 (4) of the constitution of India.

²⁰² Article 16(4-A) of the constitution of India

will be filled up in any succeeding years and shall not be considered together with the vacancies of the year, even if they go beyond the 50% limit. It concerned with backlog vacancies.²⁰³

In state of U.P and others v. Pawan Kumar Tiwari²⁰⁴

The SC held that reservation would not exceed 50%. If exceed would be unconstitutional. Total number of seats could have been more than 46. Out of 93.

Devdathan v. Union of India²⁰⁵ Supreme Court struck down the carry forward rule as unconstitutional on the ground that the power vested in government under article 16(4) could not be exercised so as to deny reasonable equality of opportunity in matter of public employment for the members of classes other than backward.

In Indira Sawhney v. Union of India²⁰⁶ (Mandal Commission Case) the SC Held That: Backward class of citizen in art 16(4) can be identified on the basis of only caste and not only on economic basis.

- a) Article 16(4) is not an exception to article 16(1). It is an instance of classification. Reservation can be made under art 16(1).
- b) Backward classes in article 16(4) are not similar to article 15(4) (socially and educationally backward). Article 16(4) is not confined too socially and educationally backwardness but wider

²⁰³ Substituted by the constitution (Eighty First) 2000 section 9th June 2000

²⁰⁴ 2005 SC 10.

²⁰⁵ 1964 SC 179.

²⁰⁶ AIR 1993 SC 477.

and includes SCs/STs also certain classes may not qualify for 15(4) and can qualify for 16(4).

- c) Creamy layer must be excluded from backward classes.
- d) Art 16(4) permits classification of backward classes into backward and backward classes.
- e) A backward classes of citizen cannot be identified only and exclusively with reference to economic criteria.
- f) Reservation shall not exceed 50% limit. The court held that the carry forward rule is valid provide it should not result in breach of 50% rule. Nagaland & Tripura are exceptions.
- g) Reservation can be made by executive order.
- h) No reservation in promotion.
- i) Permanent statutory body to examine complaint of over/under inclusion.
- j) Dispute regarding new criteria can be raised only in the Supreme Court.

Clauses 16 (4-A): This new clause was added by 77th constitution article 1995. Which provides reservation in promotion in govt jobs in favours of SCs/STs? By 85th constitution article, 2001-"in matter of promotion with consequential seniority, to any class was substituted. This amendment

aims at extending the benefit of reservation in favour of SCs/STs in matter of promotion with consequential seniority²⁰⁷.

Clause (4-B): It was added by 81th constitutional article, 2000. Which says the vacancies which could not be filled up in the previous year's shall be treated as a separate class of vacancies and will be filled up in any succeeding years and shall not be considered together with the vacancies of the years or year, even if they go beyond the 50% limit. It concerned with backlog vacancies. The SC on July 2007 declared the of Orissa Govt. Unconstitutional which enhance the reservation 65.6% in Govt. employment. ²⁰⁸There will be no quota for O.B.Cs, students in the elite educational institutions at least for the academic session 2007-08. The SC refused to lift the stay on quota for OBCs in elite educational institutions includable IIMs and IITs. For the current academic year. ²⁰⁹The constitutional validity of reservation of 27% seats for O.B.Cs in central educational institutions, in question these will be no change in equal general seat as these will be increased to its original position. The SC held that if there is possibility of increase in seats in absence of reservation, it could have given to the general category.²¹⁰

²⁰⁷ 77 the constitution amendment act 1995

²⁰⁸ In a Bath of Petitioners v. State of Orissa 2007.S.C

²⁰⁹ Anti Reservation Association v. Union of India 2007.

²¹⁰ Ashoke Kumar Thakur v. Union of India 2007 SCC 361.

8. Right To equality and reservation policy:

Consistently with the maintenance of efficiency of the Administration. Article 344, initially provided for reservation of seats for the scheduled castes and scheduled Tribes, in the house of the people and in the legislative assemblies of the states for period of ten years. However, the successive amendments to the constitution, this reservation, this reservation has been extended from time to time up to 2010 AD Article 340 provides for the appointment of commission to investigate the conditions of Socially and educationally Backward classes and to make recommendation as to the steps, that should be taken to improve their conditions. All these provisions are aimed at speedy uplift of weaker sections in order to secure equality of status and of opportunity, which in turn will promote fraternity, unity and the integrity of the Nation.²¹¹

Thus the extension of reservations in favour of other back ward classes on the basis of caste is of an illusory nature in promoting social justice. The government of the day seems to be oblivious to the directive principles of state policy which mandate promotion of the educational and economic interests of the weaker sections rapidly so as to achieve the object of a classless and casteless secular society. Reservations are like first aid, not a permanent cure to the massive problem of backwardness. Palliatives cannot solve problems. To continue the reservations indefinitely,

²¹¹ pp. Roa” Right to Equality and the Reservation policy” 1L1 2000 Vol 42 p. 193.

neglecting implementation of the directive principles of state policy is the surest way to keep the backward classes permanently backward. This is happening all over the country with the result that fraternity remains a pious hope. Reservations can at best supplement the efforts of the state to achieve socio-economic equality through time-bound measures of uplifting the weaker sections. There is no justification for not providing free and compulsory education for all children until complete the age of 14 years within the stipulated period of 10 years from the commencement of the Constitution mandated by article 45.th the centre and the state governments should therefore come up with positive measures to ensure that every child is provided free and compulsory education up to the secondary stage and wherever necessary, provide financial assistance to the family concerned to facilitate the child's education and provide additional proper's to help children from backward classes to acquire requisite ability to compete with one and all on equal terms.²¹²

9. Reservation is at all stages:-The principle of equality is applicable to employment at all stages and in all respects, namely, initial recruitment promotion, retirement, payment of pension and gratuity. With regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit. Seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior

²¹² Foot note N. 208P 204

though the less meritorious shall have priority. This will not violate Articles 14, 16(1) and 16(2). A rule which provides that given the necessary requisite merit, a member of the backward class shall get priority to ensure adequate representation will not similarly violate Article 14 or Article 16(1) and (2). The relevant touchstone of validity is to find out whether the rule of preference secures adequate representation for the un-represented backward community or goes beyond it.²¹³

10. Minimum necessary requirement under Art 335:- Our Constitution aims at equality of status and opportunity for all citizens including those who are socially, economically and educationally backward. The claims of members of backward classes require adequate representation in legislative and executive bodies. If members of Scheduled Castes and Tribes who are said by this Court to be backward classes can maintain minimum necessary requirement of administrative efficiency not only representation but also preference may be given to them to enforce equality and to eliminate inequality. Articles 15(4) and 16 (4) bring out the position of backward classes to merit equality. Special provisions are made for the advancement of backward classes and reservations of appointments and posts for them to secure adequate representation. These provisions will bring out the content of equality guaranteed by Articles 14, 15 (1) and 16 (1) the concept of equality

²¹³ Dr. Mamta din Madholia “supreme court on reservation” 1995 Kam lesh publications

because equality means equality to all and not merely to the advanced and educated sections of the society. It follows, therefore, that in order to provide equality of opportunity to all citizens of our country, every class of citizens must have a sense of equal participation in building up an egalitarian society, where there is peace and plenty, where there is complete economic freedom and there is no pestilence or poverty, no discrimination and oppression, where there is equal opportunity to education, to work, to earn their livelihood so that the goal of social justice is achieved.²¹⁴

Article 46 of Constitution “The State shall promote with special care the educational and economic interests of the weaker section of the people, and in particular of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation²¹⁵”

11. Global movement for disability equality: An important first step in the global recognition of equal rights of the disabled person was the Declaration of the Rights of the Disabled Persons adopted by the United Nations in 1975. The declaration's objective is to promote "the dignity and worth of the human person and the necessary of assisting disabled persons to develop their abilities in most varied fields of activities and promoting in so far as possible of their integration into Normal life. The

²¹⁴. Dr. Mamta din Madholia “supreme court on reservation” 1995 Kam lesh publications p.04

²¹⁵ Article 46 of the constitution of India.

declaration proclaims rehabilitation treatment, assistive aids, educational and vocational training, and social integration.²¹⁶

The Indian disability law: The Constitution of India, like the German Constitution, does not contain any provision in the chapter on fundamental rights that no person shall be disadvantaged on account of his or her disability and that no person shall be subjected to disability discrimination in India the person with disabilities are the most neglected and least served strata of the society. The root causes of disability in this country are poverty, ignorance, superstition, poor housing, lack of health care, low educational level and lack of political will. It occurred only in 1995 to the Parliament to pass a law entitled The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955, which came into force on February 7, 1996.
,²¹⁷

12. Abolition of Untouchability: Article 17 abolished "Untouchability" and forbids its practice in any form. It further declares that "the enforcement of any disability arising out of Untouchability shall be an offence punishable in accordance with law. It contains another specific application of the principle of equality before the law.²¹⁸ Article 17 places the term "Untouchability" in inverted

²¹⁶ Parmanand Singh "Disability Discrimination and Equality of Opportunities. A Comparative Analysis of the Legal frame work. 1L1 2003 Vol (1) p. 177.

²¹⁷ Foot note N.212 p.178

²¹⁸ Article 35 Empowers parliament to make laws Inter alia prescribing to be offence under part III of the constitution p. 110

commas. it was a product of the Hindu Caste System, according to which particular section amongst the Hindus had been looked down as untouchables by the other sections of that society. Article 17 guarantees social justice and dignity of man, the twin privileges which were denied to a vast section of the Indian society for centuries together. This Article is similar to the Thirteenth Amendment of the Constitution of the United States of America, 1865 which abolished slavery and empowered the Congress to enforce the abolition by appropriate means.²¹⁹

State of M.P. v. Ram Kishan Balothia.²²⁰To prevent the commission of offences or atrocities against the members of the Scheduled Castes and the Scheduled Tribes and for providing for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences, Parliament enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. 1989

Dalits and Untouchability

There are 165 million Dalits in India-about 1/6th of the total population.

Who are the Dalits?

- Dalit means "broken people."
- Dalits were formerly known as "untouchables."
- Dalits live at the bottom of India's rigid social order known as the caste system.



²¹⁹ Jain Singh v. Union of India AIR 1993 R. 177

²²⁰ AIR 1995 SC 1198

What is the caste system?

- The caste system originated around 7 A.D.
- Caste is determined by birth, not race.
- Caste is based upon the Hindu belief that a person's position in life is based upon the good deeds and sins of their past life.
- Caste determines Indians' spouses, friends, occupations and residence.

How many castes are there?

There are four major castes, and hundreds of minor castes. Each caste has specific duties and privileges.

- Brahmins-originally the priests and intellectuals.
- Kshatriyas-soldiers.
- Vaishyas-traders.
- Sudras-performed menial tasks.

Are Dalits in a caste?

- No. A fifth group was created to perform tasks considered too menial or degrading to be performed by caste members.
- Dalits are so low in the social hierarchy that they are outside of the caste system and considered "outcastes."

What is Untouchability?

- Dalits are the manual scavengers, the removers of human waste

and dead animals, leather workers, street sweepers and cobblers.

- The mere touch of a Dalit was considered "polluting" to a caste member. Thus, the concept of "untouchability" was born.

Isn't Untouchability illegal?

- The preamble to the Indian Constitution proclaims the goals of social justice and equality.
- Article 14 sets forth the principal of equality and prohibits discrimination in employment and education.
- The Constitution does not set forth a casteless society as a national goal.
- No law has been passed abolishing untouchability.
- The practice of untouchability is a punishable offense, but the law is rarely enforced.

Are there affirmative action programs for Dalits?

- Yes. The Civil Rights Act of 1955, and the Scheduled Castes and Tribes Act of 1989.
- The National commission of Scheduled Castes and Scheduled Tribes was formed to protect Dalit interests and integrate them into society.
- All programs have failed to produce substantive change.

Who called untouchability India's "Hidden Apartheid?"

- In December, 2006, Indian Prime Minister Manmohan Singh became the first Indian leader to acknowledge the parallel between untouchability and the crime of apartheid.
- PM Singh described untouchability as a "blot on humanity" and acknowledged that despite constitutional and legal protections, caste discrimination still exists throughout much of India.

**What does it mean
to be a Dalit
in India today?**



- Dalits endure segregation in housing, schools and access to public services.
- Dalits are denied access to land, forced to work in degrading conditions and are routinely abused by the police and upper-caste members.
- Dalits suffer discrimination in education, health care, housing, property, freedom of religion, free choice of employment, and

equal treatment before the law

- Dalits suffer routine violations of their right to life and security of person through state-sponsored or sanctioned acts of violence, including torture.
- Dalits suffer caste-motivated killings, rapes and other abuses on a daily basis.
- Between 2001-2002 there were 58,000 registered egregious abuses against Dalits and Tribal's.
- 2005 government report stated there is a crime committed against a Dalit every 20 minutes.
- Dalits comprise most of the agricultural, bonded and child laborers in the country.
- 2007 government report found 77% of all Indians live on less than \$.50 a day and most of them were Dalits.
- Dalit women face additional discrimination and abuse, including sexual abuse by the police and upper caste men, forced prostitution, and discrimination in employment and wages.
- Dalit children face continuous hurdles in education. They are made to sit in the back of classrooms and endure verbal and physical harassment from teachers and other students. The effect

of such abuses is confirmed by the low literacy and high drop-out rates for Dalits.²²¹

India's caste system involves a social hierarchy and is often understood to be a feature of Hinduism. Individuals are considered to be born into a particular caste and remain in that caste throughout their lives. Broad caste categories (Varna's) separate caste groups according to occupation (although mobility between occupations does not lead to changes in caste identity). Outside these caste categories are the "untouchables", now commonly known as dalits whose occupations -- sweepers, tanners, sanitation workers, etc -- were viewed as "polluting" the community.

1. Abuses Committed Against Dalits: Abuses against dalits are numerous and take many different forms; they include (but are not limited to):

Socio economic discrimination

❖ Beatings, slashing, and other forms of torture.

❖ Arson-the burning of dalits communities

❖ Violence against women

Rape, gang rape, and the parading of women through the streets naked

❖ To punish or embarrass the woman's family

❖ Beating and torture of women

²²¹ <http://www.dalitsolidarity.org/untouchability.php>

Summary execution, many times by burning alive

✚ Bonded labor

Denial of rights, especially land rights.

✚ Police bases against dalits, custodial abuse.

Article 17 of the constitution of India states that the practice of "untouchability" is abolished and forbidden.²²² Despite this prohibition, "untouchability" continues to be practiced in India in many forms. Additionally, lower caste groups are ensured reservations in political bodies as well as public sector employment. Various other protective mechanisms have been put in place by the state to ensure rights for dalits. Legislation to criminalize abuses against Scheduled Castes and Scheduled Tribes began with the 1955 Protection of Civil Rights Act. This Act was enhanced by the enactment of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in 1989 and Rules of 1995 which extended the scope of abuses which were criminalized and provided for graver penalties. Within the latter Act there are penalties for police acting negligently. Other extant legislation includes protection of the land rights of scheduled castes as well as legislation outlawing traditional abusive practices.

II. Crusade against Untouchability:-The Social organization of the Hindus inherited from the pre-British period had many oppressive and

²²² Article 17 of the constitution of India

undemocratic features. The segregation of a section of the Hindus as untouchables, who were precluded from such elementary rights as the right of entry to public temples or of the use of public wells and tanks, and the feeling that his/her physical touch contaminated a member of the higher castes, constituted a most inhuman form of social oppression. The untouchables were the outcastes of the Hindu society. Though belonging to the Hindu society, they were its proscribed part. Historically, untouchability was the social fruit of the Aryan conquest of India. In the process of social interaction, a portion of the indigenous conquered population was incorporated into the Aryan fold.²²³

III. Movements to Ameliorate their conditions:-The Brahma Samaj, the Arya Samaj, the Social Reform Conference, even political organizations like the Indian National Congress led by Gandhi, and the All-India Harijan Sangh, a non-political body founded by Gandhi, strove by propaganda, education and practical measures to restore equal social, religious and cultural rights to the untouchables. Thus a movement to elevate the depressed classes, to improve their miserable economic conditions, to spread education among them, to extend to them the freedom to use public wells, schools, and roads, and enter public temples, also to secure for them special political representation, in the country. When an untouchable was educated and improved his economic position,

²²³ A.R Desai "Social Background of Indian Nationalism golden Joble Edition p. 246.

the attitude of the higher castes towards him also began to be modified. Untouchability had basically economic foundations. This would undermine untouchability seriously. The social reform movement aiming at eliminating social injustice such as untouchability, in its turn, contributed towards the building of the Indian people on a democratic basis. During this period some other Acts such as "Removal of Social Disabilities Act 1947", "Hindu Social Disabilities Removal Act, 1948" were also passed. The Allahabad High Court upheld the conviction under this Act of two dhobis (washer men) who had refused to wash, the clothes of charmers an untouchable caste.²²⁴

This is simply a legislative recognition that in law there is no such thing as untouchables and the practice of untouchables in any form is constitutionally prohibited. It is not clear however what will constitute the practice of untouchables in any form. Art. 15 (2) seems to provide some reasonable criteria such as religion, race, caste, place of birth etc. Any scheme in which State takes a particular interest to improve the lot of Harijans would amount to practicing untouchables resulting in segregation would defeat the very purpose of Arts. 15 (4), 16 (4), 29 and 46 etc. Access to shops, public restaurants, hotels and places of public entertainment or 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 general public are the major instances of the form in which untouchables is practiced in this country. But this agenda is not exhaustive and there can be numerous ways to practice untouchability.²²⁵

²²⁴ A Survey Under Taken in Sept 1977 on Practice of UnTouchability in the Village of Sathood in Baroda Distt of Gujarat Revealed that Banagi boys in Village were made to sitting a corner in The School and were not allow to take water from the Common pot.

²²⁵ Prasad Human "UnTouchability will it leave India "AIR 1979 Journal p. 78.