

**UNTOUCHABILITY AND ROLE OF LEGISLATION:**  
**A SOCIOLOGICAL ANALYSIS**

Dissertation submitted to Jawaharlal Nehru University  
in partial fulfilment of the requirements  
for the degree of  
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By  
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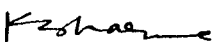
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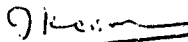
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DECLARATION

Certified that the material in this dissertation  
has not been previously submitted for any other degree  
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## P R E F A C E

The present study is based on available published researches, reports, monographs and secondary source materials. We have been able to reflect upon the aspects of relationship between untouchability and legislation. Our view is that untouchability is a very dynamic and adaptive institution. It has its dynamics and contradictions. It can't be understood just as a system of ideas and values, but rather it is a system of social relations between higher and lower caste groups and the rich and the poor.

Role of legislation is not quite noticeable. It has created some psychological impact, but without much gain at the relational level between untouchables and caste Hindus. Thus, positive legislation has not been effective, whereas the protective legislation has contributed to the improvement of the positions of those Harijans who have gone for education, politics and white collar jobs. The Untouchability Offences Act (UOA), 1955 has not produced desired results at all. However, in Maharashtra, the UOA gained more publicity than other states. The position of untouchables improved more because of Dr. B.R. Ambedkar's efforts, work done by voluntary agencies and social workers and reformers, concession to Buddhism and Dalit Panther movement etc. Role of law is negated by the powerful upper castes.

This thesis, which is, in fact, a long essay, aims at the formulation of some hypotheses for doctoral research.

(IV)

For Ph.D. I plan to undertake a study of the relationship between legislation and untouchability in some selected villages of Maharashtra.

I am grateful to Dr. K.L. Sharma, for his guidance and encouragement in completing the thesis. I am also thankful to Professors Yogendra Singh and T.K. Oommen for their help during my stay at the Centre.

There are many friends who helped me during the period of writing the thesis. I am sincerely thankful to them all, particularly, S.M. Mandavdhare, S.K. Thorat, Bhagwan Das, G.L. Jambulkar, P.T. Ganvir and Shrikant D.H. Finally, I express my thanks to Sukhdev Rawat who helped me in typing out the thesis.

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## C O N T E N T S

	Pages
Declaration Certificate	II
Preface	III-IV
Chapter - I <u>The Problem: Hypotheses and Issues</u>	1 - 16
The Basic Questions	2
The Notion of Untouchability	4
The Functional View	6
The Non-antagonistic View	7
The Historicity of Untouchability	9
Position of Untouchables in Indian Society	11
Untouchability and Legislation	13
Chapter - II <u>Untouchability and Legislation</u>	17 - 33
Untouchability as a Relational Phenomenon	17
The Norms and Practices of Untouchability	21
Untouchability and Constitution	23
Patterns of Untouchability	25
Role of Police and Law in Mitigation of Untouchability	26
Continuity and Change in Untouchability	29
Conclusion	32

contd...

	Page
Chapter-III <u>Role of Untouchability Offences Act, 1955</u>	34 - 50
Untouchability Offences Act, 1955	34
The Publicity of UOA	37
Awareness of the Act	38
Cases of Violation of UOA	42
The Violation of the UOA in Maharashtra	46
Conclusion	49
Chapter-IV <u>Untouchability and Disabilities in Maharashtra</u>	51 - 67
Region, Social Structure and Untouchability	51
The Untouchables of Maharashtra	53
Patterns of Untouchability	59
Conclusion	67
Chapter-V <u>Conclusion</u>	68
<u>Appendices</u>	72 - 88
Appendix-A: The Untouchability (Offences) Act, 1955	72
Appendix-B: Legislative Measures adopted by various States and Union Territories for removal of Untouchability prior to Untouchability (Offences) Act, 1955	85
Appendix-C: Publicity of the Untouchability (Offences) Act, 1955 by various State and Union Territory Governments	87
Appendix-D: Number of Cases dealt with Untouchability (Offences) Act, 1955	88
<u>Bibliography</u>	89 - 96

## CHAPTER - ONE

### The Problem: Hypotheses and Issues

The Basic Questions

The Notion of Untouchability

The Functional View

The Marxian View

The Non-antagonistic View

The Historicity of Untouchability

Position of Untouchables in Indian Society

Untouchability and Legislation

The focus of the present study is on the understanding of the phenomenon of the untouchability in Indian Society in general and in Maharashtra, in particular. The institution of untouchability is probably as old as other institutions like caste, property and division of labour etc. All those institutions have passed through a great deal of structural and cultural changes. The role of legislation has not been very much in bringing about significant changes in the institution of caste or division of labour or property as it has been in the case of the institution of the untouchability. It is not that other factors have not affected the institution of untouchability.

In our view legislation has brought about significant changes in the magnitude of the problem of untouchability particularly since Independence. Legislation has created a psychological upheaval among the untouchables as well as caste Hindus. We cannot measure quantitatively the role of legislation vis-a-vis other factors. However, it is known to all that certain privileges and amenities which have been extended in the forms of scholarship, reservation of jobs and representation of seats in Lok Sabha and State Assemblies have brought about significant changes among this section of Indian society.

It is not that all the sections of the untouchables have been equally benefitted by the privileges and amenities.



Some studies<sup>1</sup> show that they have created a class of elite among the Scheduled Castes. Nevertheless the impact of this is very much on those sections of untouchables who have not been equally benefitted or even those who have not been benefitted at all. Here we are referring to not only the material impact but also the psychological impact which has been brought about by legislation. In view of this basic premise, we wish to undertake an analysis of the institution of untouchability especially during post-independence period.

The Basic Questions :

With this basic premise we would examine the following questions in the present study :

(1) What exactly is the nature of untouchability ? We shall examine how untouchability is a part of the phenomenon of social inequality. In case the untouchability is found as a part of social inequality it could also be explained in terms of the theories and explanations of social inequality and stratification. Then the question is who is an 'untouchable' today and in what sense ? Further our partial attention will be on the nature of conflict between the untouchables and the caste Hindus. We may also examine here the functional aspect of their relationship.

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1. Aggarwal, P.C. and Ashraf, S., Equality through Privilege: A Study of Special Privileges of Scheduled Castes in Haryana, Sriyam Centre for Industrial Relations and Human Resources, New Delhi, 1976; Sachchidananda, The Harijan Elite: A Study of their Status, Networks, Mobility and Role in Social Transformation, Thomson Press (India) Limited, Faridabad, 1977; Chitnis Suma, "Education for Equality: Case of Scheduled Castes," Economic and Political Weekly (Special Number) Vol VII Nos. 31-33, 1972, pp. 1675-81.

(2) The second question can be posed as to what is the nature of the legislation and its role in eradication of untouchability? Here the relevant point is to be investigated that whether untouchability could be eradicated or mitigated to a large extent by legislative measures or some other measures would be required for the solution of the problem of untouchability.

(3) The third question refers to the problem of the measurement of the role of the legislation in lessening the magnitude of untouchability. It is necessary to assess the role of means of communication, transport, education, industrialization and the several movements launched by various leaders against the institution of untouchability.

(4) The fourth question related to the third one is to be answered in this study, is to examine the role of legislation in reducing untouchability. We require to understand the distribution of the resources made available to the untouchables by the government agencies. This help provides a mapping of hierarchical structure among the untouchables in terms of material benefits. It is also reflected upon the legislation itself in the sense that it was not equally benefitted to all the sections of the community and created a new kind of social imbalance among the untouchables.

(5) Finally, we will examine those aspects of untouchability which cannot be affected by legislative measures at all. Some kind of resocialization or may be desocialization of what

has been our socialized is required to understand the changes which have taken place in the institution of untouchability.

### The Notion of Untouchability

Untouchability today as an institution is functioning without any kind of legal sanctity like other institutions such as castes and beliefs and certain practices. A couple of decades ago untouchability had quite strong support of social and cultural sanctions. Now the social support to the institution of untouchability has also eroded in recent years, particularly, since Independence. Today there are Legislative Acts which not only prohibit untouchability but also provide provisions of punishment for discriminating against the untouchables. The earlier legal sanctions implicitly supported the institution of untouchability.

The institution of untouchability has been very dynamic. Changes in caste system, property relations, land tenure system and occupation have affected the institution of untouchability to a large extent. The untouchables of today are not the same as were their forefathers. Some of the descendants of untouchables are not considered as untouchables today, whereas others are treated more or less in the same way. Such a situation explains the role of legislation, occupational mobility, education, migration and political awareness.

The other dimension of untouchability is that it has been a contextual phenomenon. The caste Hindus treat the untouchable community as untouchables in one context and not-

so-untouchables in the other context. The former may refer to their sacred context whereas the other refers to mundane activities performed by the upper sections of this community. Therefore, the element of touching in the notion of untouchability has changed to a large extent. The caste Hindus touch them when they work with them on farms or when they participate in elections. But the same very caste Hindus do not touch or invite them on the occasions of marriage and other festivals. It may be that the caste Hindus invite some Scheduled Caste H.P.s, H.L.A.s, and Ministers on such occasions. They do not observe the process of purification very strictly when they violate the norms related to the treatment with untouchables. Such a situation is a consequence particularly of the increasing processes of politicisation, legislation, education and privileges granted to the Scheduled Castes.

Thus, all untouchables are not equally untouchables. Touchability is not the soul criterion of untouchability today. Now, the question is, what exactly is the phenomenon of untouchability. Untouchability, in fact, is related to social stratification, particularly to the caste system in India. As we cannot have the static view of the caste system today, untouchability should also be understood through a processual perspective. This we have already explained in terms of untouchability being a contactual and dynamic phenomenon. Therefore, the theories and the explanations of the theories of inequality and stratification could be used for analysing untouchability. Untouchability is really a very complex phe-

nomenon as it is related to caste system, legislation, property relations, exploitation and suppression etc.

There are different explanations which have been applied to the phenomenon of untouchability. These are (i) the functional view; (ii) the Marxian view; and (iii) the non-antagonistic view.

### The Functional View

The functional view refers to the desirability of the functions performed by the Untouchables as they are necessary. and some other functions are performed for them by others. The untouchables are a segment or component of society like any other components or segment. The functions performed by them are not less important than the functions of others. Since the functions performed by the untouchables are being performed by a large number the value of their functions gets minimised. The functions performed by other sections are 'technical' in nature, hence scarcity of personnel and more value of the functions. The gist of the approach is that untouchability is legitimate institution and without this kind of differentiation of functions among groups society cannot function. Thus functional approach provides an institutional legitimation of untouchability. The same could apply to the division of labour, caste system and broad division of work of society.

### The Marxian View

The Marxian view is just contrary to the functional

approach. Untouchability is considered as a phenomenon of exploitation, suppression and powerlessness. Untouchables are considered as pauperised community. Desai and Aggarwal have considered the untouchables as lowest among the proletariat.<sup>2</sup> The caste Hindus, particularly, those who own land and control resources are their exploiters and masters. The situation of conflict between the untouchables and caste Hindus could be very well explained in terms of Marxian approach. According to their view whatever changes have taken place in the institution of untouchability are due to the ~~the~~ state of perpetual conflict between the untouchables and the caste Hindus.

#### The Non-antagonistic View

The third view, namely, the non-antagonistic view refers to the division of labour and differentiation of functions without corresponding hierarchical relations. Ossowski considers Polish society as a system having non-antagonistic strata.<sup>3</sup> The same view has been applied by Beteille and Gould to the Indian situation.<sup>4</sup> The essence of this view is that the lowest in the hierarchy even could have ritual status. For example, in some situations the untouchables perform some

2. Desai, A.H. "Crusade against Untouchability" Social Background of Indian Nationalism, Bombay: Popular Book Depot, 1940, pp. 263-272; Aggarwal, P.C. and Ashraf, S. op.cit. pp. 1-25.
3. Ossowski, J. Class Structure in the Social Consciousness, London, 1963.
4. Beteille, Andre. Caste, Class and Power, Oxford University Press, Bombay, 1966; Studies in Agrarian Social Structure Chapter II: Ideas and Interests. Oxford University Press, Delhi, 1974, pp. 35-55; Gould, Harold. "Castes Outcastes and the Sociology of Stratification" International Journal of Comparative Sociology. Vol. I. 1960, pp. 220-238.

ritual functions on auspicious and sacred occasions. They enjoy the status of what Gould calls 'contrapriest.' In other words, society is divided in several groups but some of the groups are not superimposed on others on the basis of their higher status.

Earlier the functionary groups enjoyed the right of withdrawing their services if they were maltreated by their patrons. Their caste councils played vital role in protecting their interest. There are evidences of conflict between Jajman and Kamin, and the latter refusing services to the former. But such a situation was not a kind of rule, guiding the situation of conflict. In Indian society, generally the patrons dominated, and the service caste groups and the untouchables occupied lower positions. However, there are evidence, in which the patronhood was so great that the Kamins became almost parasites on them. Burton Stein found that, South India regarding this relationship is a very strong case to support this argument.<sup>5</sup>

Thus, the phenomenon of untouchability must be looked at from this different point of view. In fact, singularly none of these views explains the totality of the phenomenon of untouchability. They explain different dimensions of the phenomenon of untouchability, hence its complex character.

5. Stein, Burton, "Social Mobility and Medieval South Indian sects" in Social Mobility in the Caste System in India - Silvesberg James (ed.) The Hague: Mouton, 1968, pp. 78-94.

### The Historicity of Untouchability

The Untouchables were outside the four-fold division of the Hindu Society, namely, Brahmins, Kshatriya, Vaishya, and Shudra. However, they were also part of the Hindu society at the same time as they participated in agricultural and functionary activities alongwith the caste Hindus. The functions performed by them were considered too. They carried on scavenging, removal of carcass, leather works and such other defiling or polluting occupations. They were also denied the use of certain public amenities, such as entrance into temples, fetching drinking water from public wells etc. Most of these amenities are not enjoyed even today by the Untouchables. Earlier they depended upon the caste Hindus for the fulfilment of the basic needs, but now they have some facilities in their wards or neighbours even in the villages.

It was a situation of total discrimination in terms of both rewards to punishment. Rewards were lowest and punishments were heaviest for the same activities for the untouchables compared to the caste Hindus. An untouchable could not touch a caste Hindu. There were prescribed processes of purification of a caste Hindu, if accidentally or advertantly he touched an untouchable. The Institution of relation between the untouchables and the caste Hindus had religious overdose. It became part of the day-to-day life of religious observations. In course of time, untouchability became an atrocious institution as it imposed certain "duties" upon the untouchables which were not taken up by any other section of the Hindu society.



There were some reformers who started a crusade against this institution, but uptill now it has continued in some form or the other.

Since Independence, the institution of untouchability has taken a new form. The relations between the untouchables and the upper castes have not been as much as they were before. Now the intermediate castes of agriculturists have more contacts with the untouchables as they control land and other resources in the countryside, and extract now they more work from the untouchables than the upper castes. This phenomenon has been witnessed in Northern India, namely, in Bihar, U.P., Haryana and Rajasthan. In other words, the upper castes have taken up such occupations which do not require the assistance of the untouchables and the lower castes. The intermediate castes, since the abolition of Jajmani system, have controlled the land, and therefore, they need the assistance of lower castes. Therefore, the caste tensions have frequently occurred between these two sections of rural society.

The anti-untouchability act declares observance of untouchability as an offence which is punishable by law. Untouchability as an institution has changed, not necessarily because of the act of law. The caste Hindus have realised that in the changed situation if they observed untouchability they might loose economically and politically. With a view to continue in dominant position, they posed to be secular and non-sectarian. The reality is that by working with the lower

castes and untouchables on the farms and even in factories or by participating with them in elections and Panchyats, not only they maintain their position, but could also consolidate it. Inequality has not reduced, but untouchability has changed its form and content in a number of ways. Therefore, it is really difficult to relate in exact proportion untouchability with inequality. The more equals may observe more untouchability, and the more inequals may observe less of untouchability. Not to observe untouchability reflects a new process of change, particularly among the upper sections of Indian Society.

#### Position of Untouchables in Indian Society

Duskin considers untouchability in two different senses: (1) as a stigma attached to a certain community in terms of pollution; and (2) as a set of practices observed by the caste Hindus so that they are not polluted by the untouchables.<sup>6</sup> Ambedkar considers untouchability as a nation having defilement, pollution and contamination. All its characteristics are transmitted by birth.<sup>7</sup> Hence, untouchability becomes a kind of cultural heritage. In the absence of the avenue of mobility the stigma of untouchability continues among the untouchables. As caste rank determination is heritage so is the case of untouchability. In view of such a situation of

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6. Duskin, Lelah, "The Backward Classes: Special Treatment Policy I, II, III," Economic Weekly, Vol XXX, 1961, pp.1695-1706, 1729-1738.

7. Ambedkar, B.R. The Untouchables: Who were they and why they became Untouchables, Anand Book Co., Delhi, 1948, pp.14-21.

untouchables, philosophical and religious justification have been provided for the continuance of untouchables in Hindu society.

The institution of untouchability has contributed to the perpetuation of the traditional Hindu social order. Touch was not permitted and change of occupation was strictly prohibited. These two prohibitions resulted into status quo among the Hindus. And in this particular way, the untouchables were the part of the Hindu Society. In a number of studies the condition of Untouchables has been depicted as pathetic and exploitative. Desai, Aggarwal, and Beteille have reflected up on their settlement patterns as segregated units, not only geographically, but also socially and culturally.<sup>8</sup> Their occupations are not only considered undesirable and defiling by the caste Hindus, but they are also unhealthy and hazardous for their health. They continue to depend upon the caste Hindus for employment, shelter and other requirements. Thus, they are really the poorest of the villagers. There are some who are educated, have migrated to towns and cities. They have become some kind of elite of the Scheduled Castes but without providing much guidance

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8. Deasi, I.P. Untouchability in Rural Gujarat, Popular Prakashan, Bombay, 1976; Aggarwal, P.C. and Ashraf, S. op.cit; Beteille, A. op. cit (1966).

to their fellowmen as they do not live with them and do not share their way of life. Political participation by the Scheduled Castes is not so effective outside the Scheduled Caste constituency. This has been revealed in a number of studies, that even the elected members of various Panchayats are overshadowed by the caste Hindu members. One could say that in such a situation of politics the Scheduled Caste members would not be in a position to compete with the caste Hindus.

#### Untouchability and Legislation

Now the basic question before us is regarding the role of legislation in bringing about change in the phenomenon of untouchability. It is very difficult to establish relation between the role of legislation and decrease in the magnitude of untouchability. Legislation itself could be a result of several structural factors. On the other hand, legislation and particularly its effective implementation could also bring about some structural changes in a given society. This we could say about the initiation of land reform legislations by which the systems of Zamindari and jagirdari were abolished; and that

resulted into redistribution of land to some extent in several parts of the country. Legislation is the dependent variable in the former case, and it is an independent factor in the latter situation. The phenomenon of untouchability is not material or a concrete thing like ownership of land. It is an idea, a principle, or a value-object which judges the behaviour of people in relation to each other in certain social and cultural matters.

Now the question is whether such an abstract phenomenon could be rooted out from the minds of people by a stroke of legislation or not. On the other hand, there are factors which have lessened untouchability, by way of bringing fluidity in regard to rules of pollution and purity and connubiality. Against the question arises, whether the factor of legislation is more prominent than other factors. It can not be said decisively about the role of legislation. The protective legislation is different from punitive legislation. The constitutional safeguards and amenities extended to the Scheduled Castes and Scheduled Tribes form protective legislation and legislation regarding untouchability is a case of punitive legislation.

Our view is that most of the changes in the position of Scheduled Castes have been brought about by the protective legislations rather than punitive legislations. We know several instances which show that by implementing the punitive legislation Scheduled Castes suffered more agony due to the retaliation by the upper castes. Thus, the most affective change in the institution of untouchability has been brought about by the protective discrimination, namely, the reservation of seats in Parliament and Assemblies, in educational institutions, and by giving emenities such as scholarships, reservation in services etc. Thus, the awareness about the stigma of untouchability has increased through these amenities and safeguards and not vis-a-versa. In other words, it is not the meass of communication and mere awareness that have resulted to decrease the phenomenon of untouchability.

All the time there has been a misunderstanding particularly among the leaders and social reformers belonging to Scheduled Castes and caste Hindus that Untouchability could be mitigated by punishing the caste Hindus if they treated ex-untouchables as untouchables in their dealings. This is perhaps a wrong motion about the understanding of the problem. Thus

is only a theoretical explanation. In practice, neither those who treat ex-untouchables as untouchables have been punished nor it is quite easy to punish them because of the existing state of relations between the ex-untouchables and the caste Hindus Patrons.

In the subsequent chapter, we will make the discussion on the role of legislation and the nature of the legislation in relation to the untouchability in India and Maharashtra particular.

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C H A P T E R   -   T W O

Untouchability and Legislation

Untouchability as Relational Phenomenon  
The Norms and Practices of Untouchability  
Untouchability and Constitution  
Patterns of Untouchability  
Role of Police and Law in Mitigation of  
Untouchability  
Continuity and Change in Untouchability  
Conclusion



The phenomenon of untouchability refers to a number of disabilities imposed upon the Untouchables. It is not that the untouchables are disable, but they are being made disable through the sanctions related to untouchability. Disabilities, associated with the untouchables in India, cover their total life ranging from most personal relations to most formal and remote concerns. In a recent book 'The Untouchables in Contemporary India' edited by Michael Mahar, the contributors to the volume have studied disabilities in regard to recruitment to army and police, barriers to school admission, bondage to the land, denial of service by Brahmins, right to own land, use of sacred tanks, use of same cremation ground and segregation in regard to housing restaurants, water sources, temples and churches, etc. The disabilities are not the same for all the Untouchables. They are different for illiterate and poor Untouchables compared to the educated, white-collar and wealthy Untouchables.

#### Untouchability as a relational phenomenon

Michael Mahar<sup>1</sup> in his editorial remark observes that the nature of untouchability is variegated in social and cultural phenomena and diversity of groups subsumed under such labels. There is no single measure or uniform criterion for identifying an untouchable. Untouchability is a contextual phenomenon, but generally it is considered as a stigma attached to a certain people because of their polluted status; and this is through birth ascription. Untouchability as a behavioural

1. Mahar, Michael, op. cit. pp. XXIX-XXXII.

norm refers to a set of practices followed by the caste Hindus to protect themselves from the polluted - the Untouchables. It is not that untouchability is only a cultural phenomenon. In fact it was evolved to keep the Untouchables in inferior economic and political positions by imposing several such disabilities.<sup>2</sup>

Michael Mahar in his own article in the above referred volume cites some examples of social disabilities. These are as follows<sup>3</sup>:

1. "A man of the shoe-maker caste was observed as he was about to enter Khalapur with a load of tanned cow hides on his head. An elderly Rajput rose from his porch, brandished a stick, and threatened to thrash the shoe-maker if he did not reverse his course and proceed around the outskirts of the village."
2. "On one occasion an elderly Chamar was invited into the anthropologists room and asked to be seated in a chair. At first the Chamar declined, but after much urging, he sat down. Shortly thereafter a middle aged Rajput happened to glance into the room. He immediately curshed the Chamar and told him to remove himself from the Chaṅṅ or he would be beaten for his impertinence."
3. "In 1954 the young wife of a shoemaker, a woman of city origin, appeared in the village wearing a necklace made of gold. While silver ornaments are worn in abundance by untouch-

2. Ibid.

3. Ibid. pp. 17-35.

able women, the use of gold was "known by all" to be forbidden to untouchables. Accordingly, the shoemaker's wife was called to account by Rajput women who told her to remove the necklace or she would be beaten. She complied."

4. "From the age of five, the Chamar girl lived with her Rajput foster parents, However, when she reached puberty, her foster father summoned the elders from the chamar quarters and told them to find a husband for the girl. Arrangements were duly made through the usual channels of kin ties and members of the chamar community carried out the customary wedding ceremony in the chamar quarters. Although the Rajput foster parents did not attend the wedding, they contributed substantially to the girl's dowry and paid the wedding costs."

"A few days later while the Rajput was passing through his mango orchard, he heard someone sobbing. Looking into a tree he saw his foster daughter hidden in the foliage. After calming the girl he took her to his home where she told of the abuse and mistreatment which she had received from her in-laws. She said they had bitten her and locked her in a room from which she escaped at night and then followed the canal back to her foster parents as she was too ashamed to face them. The Rajput, infuriated by the girl's tale, went to the other village and soundly thrashed the girl's husband and father-in-law. He in turn was set upon by the Rajputs of that village who told him that no outsider could beat their servants. An inter-villages panchayat (council) was held to review the issue which

was finally resolved by the return of the girl's jewelry, given to her by her foster father, and the dissolution of the marriage."

These examples clearly show that untouchability is a phenomenon of disabilities. In other words, the untouchables are disable persons compared to the non-untouchables in regard to the above cited contexts. In fact untouchables cannot be studied in isolation without comparing them with the caste Hindus. It is not only that these disabilities are culturally established and socially practised, but they had also carried legal and administrative support. For example, the British administration in India did not discard caste system. However, on the contrary the British rule in India supported and encouraged caste system so that the Britishers could rule India by taking the advantage of the problems between various castes of India. Taking a somewhat different position Ambedkar vehemently criticised the British for adopting a policy of non-interference in religious matters and traditional norms and thereby encouraging the caste system and its evils imposing a number of social disabilities on the Untouchables.<sup>4</sup> If one looks at the Census records it is found that the various castes in a given state are arranged in a hierarchical order. The implication of all this is that the caste system could continue and the various functions assigned to different castes were found legitimate and rational. Consequently, untouchability could also continue alongwith the caste system.

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4. Rajashekhariah, A.M., B.R. Ambedkar: The Politics of Emancipation, Sindhu Publications, Pvt. Ltd., Bombay, 1971, pp. 20-21.

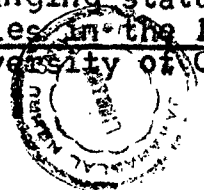
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The norms and practices of Untouchability

There has been a gap between the norms and the practices of untouchability. Theoretically, all the castes are equally important as functions performed by them contribute to the stability and continuity of the system. Therefore, the Untouchables also performed certain 'rituals' and 'priestly' functions though these were different from the priestly functions performed by the Brahmins; but in practice the Untouchable was never equal in any respect to the Brahmin or any other clean caste. The Untouchables were segregated in every respect though they performed very important functions for the caste Hindus.

With regard to the relationship between law and untouchability we find two patterns : (i) The lower castes have gone to the court of law whenever they were denied opportunity for entering into a temple or for using a public institution and facility; and (ii) the upper castes went to the law courts with the complaints that their exclusiveness would be violated and peace get disturbed. However, these two patterns of behaviour on the part of lower and higher castes, respectively, do not give proper understanding of the changes in the phenomenon of untouchability and disabilities associated with it. For example, the lower castes cannot compete with the upper castes in litigation. Cohn rightly observes: "The lower castes have generally been successful, when, through the use of police

5. Cohn, B.S., "The changing status of a Depressed Caste" in Village India: Studies in the Little Communities, Marriott McKim (ed.) The University of Chicago Press, Chicago, pp. 53-101.



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or of the urban court, they have sought to redress what they believe to be the corporate wrongs done to them by upper castes. The upper castes maintained their economic position, their knowledge of the court and integrity of the law and better access to officials have thwarted attempts to change the position of the lower castes in the village society and economy."

This shows, as also observed by Marc Galanter that "self help" as an instrument of emulation does not very much suit to the Scheduled Castes because of their poor economic position and resourcefulness.<sup>6</sup> This is why most of the movements launched by the Untouchables themselves have not been very successful. The movements launched for the Untouchables by the leaders of caste Hindus have also not benefited them substantially as these leaders by such movements ameliorated their own position. In other words, the dependence of an Untouchable is so much on the zamindars, money-lenders and on other dominant persons of the other castes in the countryside that he becomes a subject to pressure whenever such a move for self-help is brought into practice.

The efforts made before Independence, by the Indian National Congress under the leadership of Mahatma Gandhi and Dr. B.R. Ambedkar brought about some consciousness among the Untouchables. These efforts were mainly responsible for creating the constitutional safeguards and provisions for the welfare of the Scheduled Castes. Here, we are not going

6. Galanter, Marc, "The Abolition of Disabilities - Untouchability and the Law" in Mahar, M (ed.) op.cit. pp. 227-314.

into the history of the efforts made by the Indian National Congress, Mahatma Gandhi and Dr. Ambedkar, as our main concern is to see how these movements created consciousness among the Untouchables and how these movements contributed to the formulation of legislation against untouchability and disabilities. Therefore, one could say that even a piece of legislation was made after a long spell of movements, agitations and other democratic efforts. How a law without having such a history behind it could bring about social change ?

#### Untouchability and Constitution

According to the Constitution of India untouchability is abolished and its practice in any form is forbidden. Hence, untouchability based on any discriminative relations becomes punishable offence, according to law. There cannot be disability, according to law, on the basis of religion, race, caste, sex and place of birth, etc. All citizens shall have access to shops, restaurants, hotels and places of public entertainment. In other words, all public institutions, resources and places could be used by all without any discrimination. However,<sup>7</sup> there are some contradictory clauses in the Constitution. The constitution abolishes untouchability and does not recognize caste system but guarantees "autonomy" to various types of groups. This itself gives direct support to untouchability.

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7. Galanter, M. Ibid., Revankar, Ratna, The Indian Constitution: A case study of Backward Classes, Farleigh Dickinson University Press, Rutherford, New Jersey, 1971, pp. 103-244 and 312-336.

The constitutional meaning of untouchability refers to discrimination. It does not refer clearly to a practice or to a situation of relative impurity. We are not going into the legalities of the definitions of untouchability given in the Constitution. However, our observation is that the Constitution does not refer to the conventional or routine patterns of discrimination which have been almost inseparable part of the life of both the caste Hindus and the Untouchables. Thus, the Constitution takes account only of the apparant aspects of the relations between the caste Hindus and the Untouchables. We have already mentioned about the UQA and some of its clauses. This Act is mainly dependant upon the constitutional provisions. Therefore, it also refers to only some the aspects of these relations between the caste Hindus and the Untouchables.

Marc Galanter<sup>8</sup> has raised several questions about the effectiveness of anti-disability legislation. These questions are :

1. What kind of impact does it have on the officials who are to administer it, and who are supposed to be regulated by it ?
2. Does this legislation clearly enhance public policy regarding the practice of untouchability ?
3. Does it deter offences ?

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8. Galanter, M., op. cit.



4. When the occurrences occur, does it provide an official remedy for the aggrieved Untouchables ?

It is really difficult to assess the impact of anti-disability legislation as there are no clear criteria evolved for measuring the recent changes in the condition of Untouchables. There have been some changes in the past decades, but to say that they have been directly or indirectly due to legislation, seems to be quite difficult. Untouchables have been able to get higher jobs and political offices. Education has increased at all levels but the vast majority of Untouchables are still poor, rural, landless, uneducated, indebted and dependants.<sup>9</sup>

#### Patterns of Untouchability

There are several patterns of untouchability. For example, in cities, due to the anonymity, untouchability is less compared to villages as face-to-face relations exist there. In villages also, there is no single pattern of untouchability even among the same group of people. Some are treated more Untouchable than others on the ground of their relative poverty, illiteracy, and lack of influence. In the Report of Commissioner for Scheduled Castes and Scheduled Tribes, 1962-63,<sup>10</sup> it is observed that the decline in disabilities varies from locality to locality and from one aspect of untouchability to another. However, a few generalizations

9. Report of the Commissioner for Scheduled Castes and Scheduled Tribes (RCSCST), 1963-64, Dept. of Social Welfare Govt. of India, RCSCST, 1969-70; RCSCST, 1971-72 and 1972-73; Aggarwal P.C. and Ashraf, S. op.cit.
10. RCSCST, 1962-63, Dept. of Social Welfare, Govt. of India, New Delhi; pp. 1-14.

have been made. Disabilities have declined more in urban than in rural area. They have declined more in public life and occupational spheres than in social and family matters. They have declined more among the educated than among the uneducated, and more among men than among women. Compared to the middle class groups the higher castes are showing more change in regard to untouchability. The higher groups among the Untouchables are more beneficiaries of this change. The disabilities of these castes from among the Untouchables have declined more than those of the lower groups, for example, the sweepers. These patterns give us only some understanding of untouchability and not the measurement or quantification of changes. In fact, no quantification can be possible, only the problem can be understood. The reality is that the Untouchables have remained in lower status for such a long time that no sudden change could be brought effectively in their social and economic positions. As we have already pointed out, untouchability is social and relational phenomenon, culturally rooted into the Hindu tradition, and it cannot be uprooted either by legislation or by self-help and movements etc. in overnight.

#### Role of Police and Law in mitigation of untouchability

Galanter observes that the policy of anti-disability, their tactics and strategy have received little systematic consideration. The anti-disability prosecution depends on the initiative of the local police and the sympathy of local mi-

magistrates. They cannot antagonise the dominant castes of the local community. Sometimes they themselves are the members of the dominant castes.<sup>11</sup> In one study<sup>12</sup> it was observed that law means police and police means high caste people. In a study<sup>13</sup> of a district of Uttar Pradesh it was found that the police were not informed of the UOA nor they did have any copy of it. Besides, even the registered cases, we have noted, are either compromised or settled outside the courts. The disparity of the legal resources is also a hurdle with the Untouchables. Legal technicalization also creates obstacle in the implementation of the UOA. A number of other difficulties in regard the implementation of UOA have been mentioned by Galanter and Sharma.<sup>14</sup> According to Galanter it is not the lack of the awareness of UOA among the Untouchables, but it is the lack of will among the prosecutors/executives who implement it.<sup>15</sup>

An impression is being created particularly by the power-holders, intellectuals and educated urban people that every body is equal before the law, and that the untouchability has withered away. Such an impression is much beyond the reality that exists in countryside. The UOA also is used as a screen to cancel the phenomenon of untouchability.

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11. Galanter, M., op. cit.

12. Ibid.

13. Report of the Committee for Untouchability, Economic and Educational Development of Scheduled Castes, 1969, Department of Social Welfare, Govt. of India, New Delhi, p. 43.

14. Galanter, M. op.cit., Sharma, G.S., Legislation and Cases on Untouchability and Scheduled Castes in India, Allied Publishers, Bombay, 1975, pp. 1-18.

15. Galanter, M., op. cit.

Now the question is what the role of law is in bringing about social change? What is the nature of those aspects of social life in which law becomes relatively ineffective? In other words, the question is whether the notion of untouchability could be dealt by legislation or it should be dealt by basic structural changes. There is one more point that if the relations between the Untouchables and the caste Hindus have deep cultural roots, could the untouchability legislation touch upon them or the structural changes could uproot this relationship. These observation could be applied to relationship between law and society in general, but more specifically they applied to the Untouchables and their relationship with the caste Hindus.

So far we have analysed some questions related to relationship between disabilities of Untouchables and law; now we shall briefly reflect upon some studies and surveys of untouchability particularly in regard to its legal context. In a survey<sup>16</sup> conducted by Desai in Gujarat in 1967 covering all the districts and their 69 villages he finds that 64% of the villages have separate sources of drinking water, particularly wells. In 7% of the villages caste Hindus and Untouchables draw water from the same source without specific norms for the Untouchables. In 19% of the villages the source is the same, but there are specific norms to be observed by the Untouchables. In 10% of the villages the untouchables depend upon caste Hindus for supply of drinking water.

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16. Deasi, I.P., Water Facilities in Rural Gujarat for the Untouchables, Monograph, ICSSR, New Delhi, 1973, pp. 1-2; 85-88.

### Continuity and Change in Untouchability

Desai's findings show continuation of untouchability in rural Gujarat. However, there are other aspects of rural life in which untouchability is not conspicuous, such as sitting in the bus, sitting in the class room in the school, and in giving postal services. However, untouchability is observed in the panchayat meetings in 48% of the villages. Entry into temple is still a remote thing. Similarly entry into shop and houses is not allowed by caste Hindus. Functionaries such as barber and potter practise untouchability to a large extent whereas tailor is not particular about untouchability to a large extent as he stitches new cloths. Untouchability is also observed in regard to the payment of wages to the Untouchables.<sup>17</sup>

He observes that untouchability could be seen in the form of avoidance of physical contact with persons and things in regard to dealing exchanges, services and use of certain facilities etc. Desai refers to three types of untouchability, namely, in private sphere, in regard to cultural matters and in regard to occupational sphere. However, untouchability is very strong in religious and domestic spheres and it is weakening in occupational and other public spheres. In fact, untouchability in household and disregard it outside the home and village.<sup>18</sup> Now, how law could be made so forceful that it could apply to domestic, private and social life, remains still a basic problem.

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17. Desai, I.P., op. cit.

18. Ibid.

In a study of untouchability in Karnataka<sup>19</sup> the villages were categorised into prized and non-prized villages. In both the types of the villages untouchability was found in regard to temple entry, drawing water from public wells etc. In an another study by Aggarwal and Ashraf in Haryana,<sup>20</sup> the phenomenon of untouchability in rural and urban area was investigated from a comparative point of view. It was found that discriminations in urban areas on the basis of the castes was less than that of rural areas. Like Desai's study, untouchability was more practised in religious places and private domains than in the public places such as trains, buses, markets, gardens and cinemas, etc.

The Commission for Scheduled Castes and Scheduled Tribes has undertaken studies of untouchability in various states from time to time. The Report<sup>21</sup> of the Commissioner for Scheduled Castes and Scheduled Tribes, 1971-72 and 1972-73 refers to several such studies. The phenomenon of untouchability was found in police messes, in regard to employment, in educational institutions, in regard to drinking water, at the places of worship, tea shops and restaurants, in the panchayat meetings and in availing services of barbers and other service castes. The States covered, include Uttar Pradesh, Bihar, Gujarat, Maharashtra, Rajasthan, Madhya Pradesh and Himachal Pradesh.

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19. RCSCST, 1970-71, p. 151.

20. Aggarwal, P.C. and Ashraf, S., op. cit.

21. RGSCST, 1971-72 and 1972-73, pp. 150-160.

In Gorakhpur and Basti districts of Uttar Pradesh, and in Daltongang and Chaibasa of the districts of Palamau and Singhbhum, respectively, of Bihar, untouchability was observed in police messes. The police officers were found having separate kitchens on caste basis.<sup>22</sup>

In a study of two textile mills, namely, Calico Mills and Arvind Mills at Ahmedabad in the State of Gujarat, untouchability was observed in regard to the use of water taps, sitting arrangement, and use of utensils and crockery. In the weaving department of the mills only upper castes people were employed as the workers are required to such thread, and therefore, Untouchables were not given jobs in this department.<sup>23</sup>

In one school in Sikar district of Rajasthan the Scheduled Castes children were not allowed to serve drinking water, in fact, they were served drinking water by the caste Hindu children. Such a discrimination on the basis of untouchability is found in most of the schools. In one school in Madhya Pradesh it was observed that a Harijan teacher had to wash the utensils whereas the utensils used by the caste Hindus were washed by the peon of the school.<sup>24</sup> Such a practice may be quite common in schools and other public institutions not only in Madhya Pradesh but other states as well.

In regard to drinking water either there are separate

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22. Ibid.  
23. Ibid.  
24. Ibid.

wells for the caste Hindus and the Harijans or in case of scarcity of wells, the Harijans could fetch water only after the caste Hindus had finished storing of drinking water. Such a discrimination was found in the state of Bihar, Rajasthan and Madhya Pradesh.<sup>25</sup>

In most of the States the Untouchables are not allowed to enter into temples and other religious institutâns. Similarly untouchability was also found at the meetings of statutory panchayats, tea shops and restaurants.<sup>26</sup>

### Conclusion

In the foregoing discussion we have analysed the phenomenon of untouchability and the disabilities associated with it. Untouchability is more a relational phenomenon than an accidental or casual one. In other words, untouchability cannot be properly understood without analysing relations between the Untouchables and the non-untouchables, particularly the caste Hindus.

We have examined the role of law in attacking the phenomenon of untouchability. The existing legislation on untouchability is inadequate to some extent. The problem is not such that it can be resolved by legislation. Even if there is adequate legislation regarding untouchability, it cannot be effectively implimented. This has been proved by our analysis of the registered cases and their disposal regarding the practice of untouchability.

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25. Ibid.

26. Ibid.



The number of studies and surveys regarding untouchability show that its forms and manifestations have changed. Earlier it was practised more in private and public spheres but now it is practised more in familial domains and community life. Law is not able to make inroads into these domains. The present legislation applies to a larger extent to the public spheres such as markets, shops, theatres, schools, gardens, buses etc; and Untouchability is not much practised by the caste Hindus in these spheres.

It is found in primary interactional situations. As such untouchability refers to relations between those who are well off and generally they are caste Hindus, and those who are downtrodden, and generally they are Untouchables. We are not suggesting an orthodox Marxian approach to the study of untouchability, however, we would like that such situations must be studied properly.

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C H A P T E R - T H R E E

Role of Untouchability (Offences) Act, 1955

Untouchability (Offences) Act, 1955

The Publicity of UOA

Awareness of the Act

Cases of Violation of UOA

The Violation of the UOA in Maharashtra

A sociological analysis of the Untouchability (Offences) Act, 1955<sup>1</sup> (hereafter UOA) is required due to two reasons. Firstly, by looking into the nature of the cases and their disposal we can find out the attitude of the Government officials in regard to untouchability. Secondly, we can understand the nature of the impact of the UOA, 1955 on the phenomenon of untouchability, and the relations between the "untouchables" and the caste Hindus. This would also reveal us the way it has been implemented by the governmental machinery.

#### Untouchability (Offences) Act, 1955

In our study we are mainly concerned with the phenomenon of untouchability in terms of man to man relations, that is, untouchability as a form of pollution. We are not only concerned with untouchability as a physical or a touch phenomenon but also as a social and cultural institution, giving way to discriminations, social distances, and differential and unequal distribution of resources. In other words, untouchability refers to the problems of inequality, exploitation and suppression of one section of the society by the other sections. The existing system of distribution of advantages, facilities and privileges could be understood by looking into the untouchables on the one hand, and the caste Hindus on the other. It is not that all the caste Hindus form a homogenous group, nor all the untouchables constitute an undifferentiated

<sup>1</sup>•See the Act is given in detail in Appendix A, pp. 72-84. Now the Act is known as Protection of Civil Rights Act. Its implementation by this name started from 19th November 1976; Different States have passed various Acts prior to UOA, 1955, See Appendix - B p. 85,86

group. In this way untouchability could be properly understood from a structural point of view, that is, in terms of relations between untouchables and touchables. It is not just a matter of ideas and values, it refers to social relations between the privileged and the underprivileged.

Theoretically speaking, the UQA, 1955 is a punitive legislation, but in practice it has not been very different from a protective legislation like constitutional safeguards. The constitutional safeguards provide certain amenities. The UQA, 1955 does not give even such concrete benefits. Therefore, even as the protective legislation its nature is different from the constitutional safeguards. This could be said about most other social legislations also. The UQA, 1955 came into existence in 1955 and was implemented on June 1, in the same year. The Act provides a provision for punishment to a person who prevails others on the ground of untouchability from entering a place of public worship, offering prayers therein, or taking water from a public well, tank or spring. The Act also makes provision for punishing those who deny access to others to any shop, public restaurant, public hospital, educational institutions, cinemas, the natural resources and public facilities. In fact, the Act makes provisions for punishing all those who impose any kind of disability which arises out of untouchability.

The UQA has remained a paper tiger to a large extent. However, some non-official organizations, for example, All

India Harijan Sevak Sangh; Hind Sweeper's Sevak Samaj, Delhi; Ramkrishna Mission, Delhi; Iswar Saran Ashram, Allahabad (U.P.); Bhartiya Depressed Classes League, New Delhi; Thakkar Ashram, Nimkhardi, (Orissa); Servants of Indian Society, Pune; (Maharashtra); and some other voluntary organizations have taken the message of the Act to the people. The Government gives grants to these institutions for working for the welfare of the Scheduled Castes and Scheduled Tribes. The eradication of untouchability is one of the major functions of these voluntary agencies.<sup>2</sup> The fulfillment of the objective is being done by publishing the existence of such Act.

The official or governmental agencies include the Department of social Welfare at the Centre and the States. The Department of Information and Broadcasting also plays a significant role in the propagation of the Act, with the view to lessen the magnitude of untouchability. From time to time the Parliament has constituted committees to examine the existing state of untouchability and the impact of constitutional safeguards and such other Acts. These committees have also examined the contribution made by the voluntary organizations. Several new schemes have been recommended by these committees alongwith the old programmes for the welfare of the Scheduled Castes. These governmental agencies are required to gather facts about the cases of offences on the ground of untouchability.

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2. Report of the Committee on Untouchability, Economic and Educational Development of Scheduled Castes and Connected Documents, 1969, Department of Social Welfare, Govt. of India, New Delhi, 1969, pp. 1-65.

### The Publicity of UOA

Today all the States have Ministers for Social Welfare, for Harijan Welfare or for Adivasi Welfare. Some states have also separate publicity wings in the department of Harijan or social welfare. Today most of the publicity and propoganda against untouchability is being done by the public welfare departments. The states of Bihar, Gujarat, Madhya Pradesh and Mysore have special provisions for such publicity. The UOA has been translated in to several regional languages. A committee<sup>3</sup> appointed by the government during 1967-69 made an assessment of the nature and extent of publicity against the untouchability and of the UOA.

The table<sup>4</sup> shows the publicity of the UOA in various States and Union Territories.

It has been found that out of 18 States and Union Territories about which we have collected information, 8 states and territories have not published the Act in any language. That is, 10 states and union territories have published the UOA in their respective regional languages. Further 8 states and union territories published the Act in only one language and 8 states and union territories have not distributed the published copies of the Act. Kerala, Kamataka, Orissa, Rajasthan, Uttar Pradesh, West Bengal, Manipur, Pondicherry are the States and Union Territories which have published the Act only in one language, that is, in their respective regional languages.

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3. Ibid.

4. See appendix C.P.27.

The mechanism of the publicity of the Act is also not quite effective. The State Governments and Union Territories sent the copies of the Act to the District Magistrate, District Officers and others for distributing to the people. However, there is no way out to insure the actual distribution. For example, it was found out that in 1961 the Government of Orissa published 500 copies of the Act, and out of these 483 copies remained undistributed upto 1968. Except the States of Kerala and Pondicherry no other states and Union Territories have a good record of doing this work. It was also noted that Maharashtra Government published the Act in five languages and brought out two lakhs copies of it; but the various institutions and organizations did not place demands for procuring the copies of the Act. This gives the impression that social legislation not only remains ineffective in implementation but also does not get popularity through publicity. This further shows that social legislation of this sort will not have much relevance because of the deep rooted practices and attitude connected with the phenomenon of untouchability. In other words, it is really difficult to initiate a process of equality through such legislations on a structure of long standing unevenness and inequality.

#### Awareness of the Act

The people may not be aware of the theoretical or technical aspects of a given legislation and yet they may be making use of that legislation. On the contrary the people may be aware of legislations and either they do not depend upon them

or do not make use of them. Such people represent the privileged ones of a given society. There may be still people who really need such protective legislations but are unaware of it and at the same time are not in a position to make use of the legislation to protect their interests and promote welfare.

We have already mentioned that UQA has not received proper publicity. Awareness of it depends upon the publicity to some extent. In 1966 in Uttar Pradesh a committee was appointed to inquire into the awareness about the Act. Government officials, including district level officials, teachers and officials concerned with the Harijan welfare, police officials and social workers were studied regarding their knowledge of the UQA. The study was conducted in Sitapur district of the state. To make the study comparative a village was also contained in the study.

The following Table-I shows that out of 241 persons interviewed, only 128 persons i.e. 53.1 percent were aware of the prohibition of untouchability under law. The awareness of the prohibition of untouchability was 51.9% and 32.0% among the urban and rural population, respectively. Coming to the awareness of the existence of the UQA only 42.1%, 55.5%, 25.0% and 11.9% of the Government servants, police officials, social workers and urban population (of these who know the prohibition of untouchability under law), respectively, were aware of the existence of the Act. None of the persons interviewed from rural population knew that any such Act existed. As



TABLE :

Table showing the awareness of the Untouchability (Offences) Act, 1955 among various officials, non-officials and public in general in Sitapur District of Utter Pradesh.

Sl. No.	Category	Total no. of Persons interviewed	Awareness of the provision of Un-touchability under law		Awareness of the UQA, 1955			
			No. of Persons	% to Column 3	No. of persons aware of the existence of the Act	% to Column 4	No. of Persons aware of important provisions of the Act	% to Column 4
1.	Government Servants	20	19	95.0	8	42.1	8	42.1
2.	Police Officials	30	27	90.0	15	55.5	2	7.0
3.	Social Workers	10	8	80.0	2	25.0	2	25.0
4.	Urban Workers	81	42	51.9	5	11.9	5	11.9
5.	Rural Population	100	32	32.0	0	0	0	0
		241	128	53.1	30	23.4	17	13.3

Source: Quoted from: the Report of the Committee on Untouchability, Economic and Educational Development of Scheduled Castes and Connected Documents, 1969, p. 47.

regards the provisions of the Act, the figures are unsatisfactory. Only two out of thirty police officials could tell something about the provisions of the Act.

In another survey of a village in Madhya Pradesh, it was found that only 4% of the people were aware of such an Act. The

level of awareness in other states was not also high. However, the level of awareness in Madras, Orissa and Uttar Pradesh compared to Gujrat, Kerala, Karnataka, Punjab and Himachal Pradesh was found lower, but by and large the rural people were unaware of such legislation.<sup>5</sup>

Whatever relaxation has come in the rigid practices related to untouchability is mainly due to the extra systemic factors such as increased role of market economy, means of transport and communication, migration, changes in traditional occupation and elections etc. Before Independence several organizations and workers launched movements for the entry of the Harijans into temples. Some of them were also successful in their mission at the time of the movements. However, such efforts did not have continuous effect because of other structural obstacles, particularly created by the upper sections of the society, and the dependence of the lower castes on the upper caste patrons. Therefore, the flexibility in the sanctions related to untouchability is mainly due to these structural factors. Moreover, the use of certain public amenities is determined by the economic position of the Untouchables. Therefore, the problem must be seen in terms of their position compared to that of the other caste groups.

Bailey's study shows that caste-irrelevant factors contributed to the improvement of economic position of the

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5. Ibid.

6. Bailey, F.G., Caste and the Economic Frontier: A Village in Highland Orissa, Manchester University Press, Manchester, 1957.

Distillers (untouchables), and caste-relevant factors, particularly untouchability, became obstacle in their social mobility. This study clearly shows that the change in the phenomenon of untouchability cannot be brought about quickly either by legislation or by structural forces or even by both. In fact, the UQA and some structural factors such as market economy, transport, commerce and elections are found simultaneously, but there has not been interaction between the two.

#### Cases of Violation of UQA

There is no relationship between the reported cases of violation of the Act and the actual extent of untouchability. We could speak on the basis of our experience about the countryside that the every social occasion could be treated as an example of multiple incidences of untouchability, whether it is birth, marriage, death or social festivities and ceremonies etc. Therefore, the formal incidence of untouchability refers to a particular situation which compelled the aggrieved to complain against the discrimination meted to him. Day-to-day discriminations remain unrepresented in the books of the Government and administration. May be that there is a situation of endemic fractionalism and the untouchable castes are numerically preponderant and economically well off. And therefore, they have not agreed on the terms and conditions imposed by the upper castes, and decided to go to the appropriate authorities. This shows the capacity of the Scheduled Castes to resist against the dictatorship of the upper castes. This phenomenon is not at all new in Indian situation. The Nonias (a Shudra caste) because of their improved economic position

claimed a Kshatriya status and they were partly successful in achieving this status in about 50 years period. Studies by Stein<sup>7</sup> and some other historians like Romila Thapar<sup>8</sup> and Pannikar<sup>9</sup> etc. reveal that the lower castes resisted against the upper castes, and this resulted into their spatial mobility. This existed in ancient India according to Stein. Sometimes such a mobility became partially a threat to the existant social stratification. Individual mobility was always there, and it was not that it existed only among the upper castes. This also shows that caste was all the time a dynamic system in terms of its adaptibility and ressilience. In view of these observations we should look at the cases of the violation of the UQA, 1955.

Violation of the Act refers to the observance of untouchability in matters related to temple entry, worshipping, entry into hotels, schools and use of public amenities etc. In other words, this refers to situation in which some are allowed to utilize the public amenities whereas others are denied on the basis that they are "untouchables." The real situation is that the confrontation between the caste Hindus and the untouchables does not exist but the fear of threat, if the Harijans use these facilities always exists in the minds of the people. This itself should be considered as the phenomenon of untouchability. Thus, out of fear they do not make

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7. Stain, B., op. cit.

8. Thapar, Romila, History of India, Penguin Books, 1968.

9. Panikkar, K.M., Hindu Society at Cross Roads. Asoa Publications, Bombay, 1956.

use of public amenities. Otherwise they would have made the use on the equitable basis. In such a situation the cases reported regarding the violation of the UQA are really negligible, as others do. The table<sup>10</sup> shows, however, the cases dealt with regarding the violation of the UQA, 1955.

An analysis of the cases from 1955 upto 1971 does not show any pattern in terms of increase or decrease of the cases in a unilinear fashion. For example, the cases registered with the Police in 1955, were 180. The number increased to 693 in 1956, and in 1968 only 214 cases were registered with the police. In 1971 the number of cases registered with the police was 526. Between 1955 and 1971 there is a great deal of fluctuation in the number of cases registered with the Police. The number of people convicted in the cases is quite small. Thus, a large number of cases either were not challaned or acquitted or found compounded, and then a substantial number of cases remained pending. Even if a large number of cases were challaned out of the registered cases, only a few were convicted. In a vast country like India where Scheduled Castes are a big component of its population, and where the atrocities on the Harijans are frequent and numerous, these registered cases do not indicate even an iota of the real situation.

These figures also indicate that there had not been adequate publicity of the Act. This also shows that even if the people are aware of it, it is not an effective legislation.

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10. See Appendix D, p. 88.

Registering a case with the police by a Harijan against a caste Hindu patron might invite more troubles than solving the problem. This has happened also due to several other institutional changes being introduced in the country side. For example, with the introduction of credit cooperative society systems, and rural banks, the village money lenders have started refusing loan to the poor peasants and agricultural labours. The present condition is such that all the requirement of the rural poor cannot be met by these agencies. That is, these have not been able to replace the traditional institutional set up. The same applies to the implementation of the untouchability offences Act and other social legislations.

Some of the cases mentioned in the Report<sup>11</sup> could be cited in regard to the nature of the cases of disposal of violation of the Act. Generally, the cases were decided quite late. The magistrates took six months or more time in disposing the cases. It is said that delaying amounts to denying justice. The poor cannot afford to attend courts and pay fees to his lawyers for a long time to seek justice. It also happens that the rich caste Hindus also manipulate a delayed disposal of the cases so that the complaints made become quite negligible. About 71% of the persons who committed atrocities or observed untouchability were fined only upto rupees five. A very few of the accused were sent to jail for a couple of days and in a quite substantial number of cases were acquitted after the settlements were arrived at outside the court.

11. Report of the Committee on Untouchability, Economic and Educational Development of the Scheduled Castes and connected Documents, 1969.

Further, in a number of cases proper evidences could not be provided before the court. Hence, the accused were acquitted by the court.

Recently in a study of the violation of the UOA in Rajasthan, Sharma<sup>12</sup> observes that only a small number of cases were registered under the Act and due to the prejudicial attitude of the police all the registered cases were not challaned. Sharma finds that only in 8% of the cases, the caste Hindus were punished; and in the rest of the cases either they were disposed or due to the tactic of delaying they were made infructuous.

The Violation of the UOA in Maharashtra :

The central Government have given necessary grants for the publication and publicity of the UOA to the State Governments. The Maharashtra Government as we have mentioned earlier has published the Act in five languages, namely, English, Marathi, Gujarati, Kannad and Hindi. The publication of the Act made by Maharashtra is much more than other States. The copies of the Act were distributed through voluntary agencies, district and taluka administration to the public and police. The copies of the Act were circulated upto village level.

The Government of Maharashtra have launched several programmes for making the untouchables aware about their civil rights. These programmes are made particularly for those who

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12. Sharma G.B., "Law as an Instrument for abolition of untouchability". Economic and Political Weekly, Bombay, Vol. No. April 1975. pp. 635-639.

either do not read the Act or for those who cannot read. The State observes a special week known as Harijan Saptah for the purpose of educating the Harijans. During this week the Zila Parishads are asked to make every effort to facilitate the entry of every Harijan into temples, shops, hotels, salooms etc. The leaders and the officers are requested to spend some of their time with the Harijans in their localities. Public meetings are organized to educate the people. Some cultural activities are also organized in which both Harijans and the upper caste people participate together. In addition to this the Government of Maharashtra have appointed committees both at state and district levels to see that the UQA is implemented effectively. The following Table-II shows the cases registered under UQA from 1955 to 1965 in the State of Maharashtra.

The Table-II reveals that the State Governments do not have adequate information about the violation of the cases under the UQA. On the basis of such inadequate information it becomes quite difficult to make a Inter-State comparison about a over a period of time. Like the all India situation, there is no pattern of the registered cases in Maharashtra also. For example, in 1958 the number of cases registered is 133, in 1960 it comes down to 45, in 1961 it further comes down to 38, and in 1962 it comes to 17. In 1963, the number goes up upto 35, and in 1964 it comes down to 6. The same all-India pattern applies to the challaned conviction adquittal and pending of the cases.



TABLE  
Statement showing the Cases dealt with under UOA, 1955 in the  
State of Maharashtra

Year	N u m b e r o f C a s e s						
	Registered with Police	Not Challa- ned	C h a l l a n e d				
			Number	Convicted	Acquitted	Compounded	Pending
1955	N o t a v a i l a b l e						
1956	N o t a v a i l a b l e						
1957	Figures		supplied		not		reconciable
1958	133	1	132	2	1	9	120
1959	N o t a v a i l a b l e						
1960	45	10	35	9	1	6	19
1961	38	5	33	15	4	2	12
1962	17		17	1		1	15
1963	35	17	18	3	1	3	11
1964	6		6	4	1		1
1965	N o t a v a i l a b l e						
	274	34	241	34	8	21	178
%		12.4	87.6	14.1	3.3	8.8	73.8

Source: Adapted from: Report of the Committee on Untouchability, Economics and Educational Development of Scheduled Castes, Ministry of Home Affairs, Government of India, New Delhi, 1969, p.89.

We have already mentioned that the caste Hindus received the support of Police and Administration compounding and delaying in the cases. The existing socio-economic condition of the untouchables is such that they cannot afford to prolong the cases till the final decision is given against the caste Hindus.

The analysis of the UOA shows that so far legislation has not proved effective in checking discrimination, exploitation and suppression of the untouchables. Registration of these cases was referred to a very special kind of a situation as this does not reflect upon the day-to-day problems being faced by the Harijans. Most of the time those who go to police to register the cases, have either the support of some faction leaders who are against those who commit the atrocities or that they are awakened.

Therefore, whatever awareness among the Harijans has some about is mainly due to the constitutional safeguards and ameliorative provisions. These safeguards and provisions have initiated a process of loosening the traditional barriers between the caste Hindus and the untouchables as they reduced the economic and cultural disparities between the two. The constitutional safeguards are a different sort of legislation. They are not punitive in nature. Moreover, they are implemented in the form of a guarantee, and therefore, they are not left to the discretion of

either the leaders or the administrators. In the next chapter we will discuss the pattern of disabilities in general in India, and in Maharashtra in particular.

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CHAPTER - FOUR

Untouchability and Disabilities in Maharashtra

Region, Social Structure and Untouchability

The Untouchables of Maharashtra

Patterns of Untouchability

Conclusion

In the earlier chapters we have discussed the phenomenon of untouchability and various forms of disabilities vis-a-vis the role of legislation. In this chapter we shall discuss in detail the disabilities of the untouchables in Maharashtra. The various reports of the Commissioner for Scheduled Castes and Scheduled Tribes, the reports of the committees appointed by the government and particularly the Elayaperumal report have discussed the problem of untouchability and disabilities in great detail. Several studies on untouchability have been made by sociologists and other social scientists. All these studies and reports have not taken into account the social structure of a given state, which is one of the most important variable, alongwith other factors such as education, politicization, role of social workers and reformers, etc.

#### Region, Social Structure and Untouchability

Our view is that the magnitude of the problem of untouchability and disabilities is not the same in all the states. For example, in the states of Rajasthan, Haryana and Madhya Pradesh the Untouchable labourers have not been in great demand after Independence. A large number of Untouchable labourers have migrated from Rajasthan to Delhi and the Punjab. In the Punjab because of the increased agricultural productivity, the agricultural labourers have been in great demand; and the indigeneous labour force has not been able to fulfill the requirements. Such a state of their representation among the states provides a different pattern of relationship compared

to Rajasthan and other places. When we look at the situation in Uttar Pradesh (particularly Eastern Uttar Pradesh), is quite different. The Untouchable labourers are available locally in large number, and they are also required by the land-owning castes, but the situation is not the same as it is in the Punjab. Bihar and Uttar Pradesh are much behind in agricultural production, industrilization, education and general prosperity than the Punjab. The situation in Maharashtra provides us a different kind of understanding. We have already mentioned that Maharashtra has publicised the UQA more than any other states; and the Untouchables are more conscious about their rights, privileges and UQA than that of other states.

Dr. B.R. Ambedkar launched a vigorous movement to elevate the position of the Scheduled Castes in the country as a whole and in Maharashtra in particular. There were anti-Brahmin movements in Maharashtra. Mahatma Jyotirao Poole, Shahu Shatrapati Maharaj, Vitthal Ramaji Shinde and other social workers fought against untouchability. They emphasised on the welfare of the Untouchables.

In Independent India Wardha has been also a centre for such activities for the welfare of the Harijans. Mahatma Gandhi carried his programmes for the welfare of the Harijans from Wardha Ashram. Acharya Vinoba Bhave followed Gandhiji and carried his policy and programmes by keeping Wardha as his head quarter. Large scale conversion to Buddhism of the Mahars has taken place in Maharashtra as a reaction against Brahmini-

cal tyranny. During the past few years, the Dalit Panthers movement had been quite active. Several young educated Dalit youths have been participating in this movement. Dalit literature is being generated for the depressed people and the Shastrik literature is being rejected. From all these points of view Maharashtra could be considered as a different type of case for the study of relationship between untouchability and legislation.

Generally, one thinks that law should prove as a very useful instrument of change in Maharashtra with such socio-cultural and political background, but even in this state law has not proved as a very effective instrument for social change. What we find is that movements launched by Dr. B.R. Ambedkar, social work done by many people and conversion to Buddhism, and Dalit Panther's movement have brought about more awakening among the Scheduled Castes than the UOA. Now we shall examine the situation as it exists in the State of Maharashtra.

#### The 'Untouchables' of Maharashtra

The conclusions drawn by Sunanda Patwardhan seem to be quite optimistic. She observes: "The overall perspective is that there is an increasing possibility for upward mobility for all the Harijans. The capacity of break-through depends upon many sources and levels from politicization and education to the imitation of higher castes and conversion to other

religions."<sup>1</sup> This applies to Mahars only, and not to any Harijans. Sunanda Patwardhan, Change among India's Harijans: Maharashtra - A case study. Orient Longman, New Delhi, 1973, pp. 185-214.

Jan castes like Chambhars, Dhors, Mangs and Holars in Maharashtra. But this is applied to the Jatavas of Agra who are trying to achieve status equal to those of caste Hindus. Influence of Dr. B.R. Ambedkar, his movement and conversion to Buddhism have contributed to social mobility among the Jatavas. Elsewhere we find no such examples in any part of the country.

The Mahars are the most awakened from among the Untouchables of India. They have taken maximum benefits out of the constitutional safeguards and provisions. This is understood by one simple fact that the Mahars have become neo-Buddhists, i.e. they have come out of the caste bonds, and still take all the benefits as being part of the caste system. This is a situation of "double consequences." Nowhere else such awakening has been found among the Untouchables. They have very well adopted both secularization and traditionalization by discarding the caste system and taking up the advantages by remaining as the Scheduled Castes. In this way the distinctions of non-Buddhists and Buddhists among the Mahars is very misleading. However, this shows two levels of consciousness among them.

The state Government in Maharashtra has taken the following steps for effective implementation of the UQA.<sup>2</sup>

- (i) The State High Court has issued orders to the judicial magistrates to dispose of the cases filed under the UQA as ex-2. RCSCST, 1971-72 and 1972-73, pp. 152-153.



pediteously as possible by giving short adjournments if and when necessary.

(ii) The law and Judiciary Department has issued necessary instructions to judicial Magistrates to supply copies of judgements to the Director of Social Welfare, free of charge, when required.

(iii) The Revenue and Forest Departments have issued necessary instructions to include the UQA in the existing syllabi for the Revenue and Forest Services examinations.

(iv) The UQA has been included in the syllabi for training of police officers.

These instructions were very widely publicised. The Government of Maharashtra also constituted four committees at the divisional level one each for Bombay, Poone, Aurangabad and Nagpur. These committees were to inquire into and only for the purposes of the allegations of breaches of provision of the UQA. The task of investigating specific cases was assigned to these committees from time to time by the State Government. Recently, the State Government has constituted the District Level Committees under the chairmanship of District Collector. The committees have replaced former Division Level Committees.

The Reports of the Commissioner for Scheduled Castes and Scheduled Tribes, have mentioned the cases of atrocities on Harijans in Maharashtra. These incidences of atrocities

prove that inspite of such a different character of the state of Maharashtra, law has not been a very effective instrument of social change. Now we shall study the findings of the various surveys conducted by several individuals and institutions in Maharashtra.

The Untouchables are found not only in rural areas in Maharashtra but also in its urban centres. Like the Untouchables of the other part of the country they are also a heterogeneous group. Intra-group hierarchy is a very significant aspect of their life. The Untouchables are about 6.3% of the total population of the State.<sup>3</sup> There are about 57 castes and sub-castes of the Untouchables in Maharashtra. However, about 90% of the population of the Untouchables is of Chambhars, Mahars, Mangs or Matangs. The remaining 10% population is divided into a large number of small castes of the Harijans.

The Chambhars are numerically less than Mahars and Mangs. Their traditional occupation is leather-work including shoe-making and leather equipment etc. Their economic position is comparatively better than other groups, probably because of their traditional occupation. They have more patrons and relatively more income than what they had earlier. The betterment of economic position of the leather workers is also found in other parts of the country, particularly where only some have retained the traditional occupation. Since the Chambhars are more attached to the caste Hindus and their patrons more than any other group, they follow the life ways

3. Sunanda Patwardhan, op. cit.

of Hindus more than Mahars, Mangs and other groups. The Chambhars, therefore, consider themselves superior to other groups.<sup>4</sup>

Mahars come next to the Chambhars in the ritual hierarchy and the Mangs occupy the third rank. Numerically, the Mahars are the most populated community from among the Harijans. They constitute 35% of the total Scheduled Caste population and are found through out the state. The Mahar's concentration in a Maharashtrian village is known as Maharwada. The traditional occupation included removal of dead animals. They also provided certain other services to the village community. The Mahars of Maharashtra have been the most "rebellious" group from among the Harijans. They have, at least theoretically, come out of the caste system and the Hindu religious ethos; therefore they do not accept Hinduism. In 1956, a large number of Mahars and some other Untouchables and even some Brahmins embraced Buddhism as propogated by Dr. B.R. Ambedkar. The Mahars have discarded caste system and the institution of untouchability, though theoretically only to a large extent. For example, a good number of village Mahars do not accept food and water from Mangs and Bhangis and they do not deny if it is offered by Chambhars. Similarly, they follow untouchability but talk about intercaste marriages without much effect.<sup>5</sup>

We have mentioned earlier also that the Mahars are the only Harijan community who have taken maximum benefits accru-

4. Sunanda Patwardhan, op. cit. pp. 1-24.

5. Ibid.

ing from constitutional safeguards, reservation of jobs and seats, and availability of certain facilities etc. However, the economic position of the Mahars is not better than that of the Chambhars. Most of them work as agricultural labourers in villages and as construction workers in cities. Because of leaving the traditional occupations, Mahars have become a mobile community. They express group solidarity more than other groups.<sup>6</sup>

The Mangs or the Matangs are the most numerous group. Their locality in the village is known as Mangwada. Their food habits are slightly different from other two groups. They also practise endogamy and follow other practices and customs of the Hindus. Their traditional occupations are rope making and broom manufacturing. They have also taken up the jobs which, in fact, have been left by the Mahars. Only Bhangis are inferior to the Mangs. Compared to the Mahars and Chambhars, Mangs are low in their economic, educational and political statuses. They live both in rural and urban areas.<sup>7</sup>

We are not going to analysis here all the caste groups of the Untouchables. The analysis of these three groups clearly shows that they are not homogenous groups. They have a hierarchy of their own which is generally not accepted by caste Hindus. For example, for the caste Hindus they have the same status, i.e. of the Untouchables. But the reality is that they are a differentiated lot, and the legislation does

6. Ibid.

7. Ibid.

not take this into account. As we have already seen that the Chambhars are economically better off, the Mahars are ahead of Chambhars and Mangs in the field of education and services and even politics. The Mangs are backward economically, educationally and culturally. Therefore, it would be wrong to apply the same set of policies to all the Untouchables because they are labelled as 'untouchables.'

### Patterns of Untouchability

A number of studies of untouchability have been undertaken by several organizations and individuals, we shall discuss some of the salient features of the studies, particularly the studies undertaken by Jagtap, M.B., Gokhale Institute of Economics and Politics, Poone (1958); and by Rashtriya Sevak Sangh (1969-70).

The following Table-I shows the observance of untouchability in regard to water, temple entry, hotels, barber service, school, grampanchayat and co-operative society.

Gokhale Institute of Economics and Politics, Poone studied the 560 families of Mahar community from 17 villages of Wai Taluka in Satara district. The study was conducted after the passing of the UQA and the conversion of Mahars to Buddhism. Out of 560 families all except 2 converted to Buddhism. This also meant that they left their traditional callings and some of them also sanskritized themselves by discarding their food habits and adapting the styles and habits of the upper castes. Since most of the Mahars did not

TABLE I  
UNTOUCHABILITY IN MAHARASHTRA

	Year & Number of Villages							
	1958 (17)*				1969-70 (206)*			
	T	+	±	-	T	+	±	-
1. Water Supply	17	17	0	0	206	102	57	47
	%	100	0	0	%	49	27	24
2. Temple Entry	17	17	0	0	206	126	28	52
	%	100	0	0	%	61	13	26
3. Hotel Entry	5	3	2	0	70	23	17	30
	%	60	40	0	%	33	24	43
4. Barber's Services	17	15	2	0	206	134	34	38
	%	79	11	0	%	65	16	19
5. School Entry	Not Surveyed				206	0	40	166
					%	0	19	81
6. Grampanchayat Entry	Not Surveyed				206	0	75	131
					%	0	36	64
7. Co-operative Society Entry	Not Surveyed				206	0	77	129
					%	0	37	63

\* The number of villages is written in bracket  
T Total villages surveyed  
+ No entry to place i.e. full untouchability  
± Entry to place but discrimination while using the facility i.e. partly untouchability  
- Free entry and free utilization of the society i.e. no.untouchability.

Source: Compiled from: Gare Govind and Limaye Shirubhan, Maharashtrateel Dalit Shod Aani Bodh (in Marathi) Sahadhyayana Prakashan, Bombay 1973, pp. 32-38; 173-194. The original studies are conducted by Jagtap H.B., Gokhale Institute of Economics and Politics Poone (1958: 17 villages) Rashtriya Sevak Sangh, 1969-70; 206 villages).

have land they were forced to become agricultural labourers. No regular work was available to them in the respective villages. They were forced to migrate to the cities of Poone and Bombay. It is really difficult to say that conversion to Buddhism has resulted into the migration of Mahars to cities, their samskritization and taking up of agricultural and manual work. For example, in other states also such a process of change has occurred among the Harijans but without conversion to Buddhism. In the Northern States of India such a change has taken place due to the abolition of zamindari and jagirdari system. In spite of conversion, samskritization and migration of the Mahars to the cities, certain disabilities have been found.

In a large number of villages it was found that the Untouchables were not allowed to fetch water from the same source, and alongwith the caste Hindus. In all the 17 villages studied, the neo-Buddhists were not allowed to enter into temples. In regard to the entry into hotels, tea stalls the partial discrimination was practiced in two villages out of five villages, whereas in three villages the untouchables were not allowed even to sit and take tea. In the other two villages the Untouchables were allowed to visit the hotels only on the weekly market days. In all these tea stalls separate cups and saucers were kept for the use of Harijans. The barbers also did not render the facilities of hair-cutting and shaving to the Harijans. However, in the big villages they could avail these facilities.

As we have already mentioned that the conversion to Buddhism, sanskritization, and even improvement of the economic conditions of the Mahars have not brought about significant change in the attitudes of the caste Hindus. The Untouchables are not, to a large extent, dependent upon the caste Hindus as they were in the past. Even then, the caste Hindus treat the Neo-Buddhists as Untouchables. However, the Mahars particularly the Neo-Buddhists might feel that they got rid of the stigma of pollution.

On the basis of the same framework, in 1969-70, 206 villages were studied by Rashtriya Sevak Sangh in collaboration with the Gokhale Institute of Economics and Politics, Poone. This study covered 4474 families from 8 districts of Maharashtra. The survey was conducted after 14 years of the implementation of the UOA. The salient features of the survey are as follows :

Out of 206 villages in 57 villages separate arrangement for drinking water for the Untouchables existed. Where such an arrangement did not exist, the caste Hindus supplied water to the Untouchables from a distance. In some villages the Harijans could fetch water when the caste Hindus were not fetching water for their own consumption. In 102 villages the Untouchables were not allowed at all to draw water from the wells being used by the caste Hindus. However, in 47 villages the Untouchables were allowed to fetch water from the common wells, generally situated in the localities of caste Hindus. There would be several factors responsible for such



liberal attitudes. The caste composition of the villages could be one factor, the level of awareness could be another factor, and the numerical and/or the dominant position of the untouchables could be the third factor.

Out of 206 villages, in 52 villages the temple entry was allowed to the Untouchables. In 28 villages the Untouchables had entry upto outer portion of the temples. And in the remaining, they were not allowed at all to have an entry into temples. In regard to hotels only 70 villages had tea-stalls, and in 30 of these villages the entry of the Untouchables was permitted to tea-stalls. No discrimination was meted to them in these village restaurants. In other 17 villages, the entry was allowed but with certain restrictions, separate utensils were kept for them, they had to wash them after the use. In remaining 23 villages the Harijans were not allowed to enter the tea-stalls. In 38 villages, the Untouchables could have hair-cut. But in other 34 villages such a facility was extended to them only on the days of weekly markets. The Untouchables were not given services by the barber in 134 villages. It is necessary to go into the details of the discrimination in regard to drinking water, temple entry, tea-stall and certain other services.

The school is the only area where untouchability is least observed. In 166 villages, the children of caste Hindus and Untouchables sat together and inter-acted freely with one other. There was no discrimination meted to the Untouchable children. But in remaining 40 villages, the Untouchable chil-

dren were asked to sit separately. They were not allowed to use the same utensils for drinking water. Discrimination was meted to them in other respects also. Similarly in 75 village Panchayats, the Harijan Panches used to sit separately and took tea in separate utensils. This was done even in the presence of government officials. The same treatment was meted to the Harijan members in cooperative societies also.

Similar results were seen by a Committee constituted by the Maharashtra Government in 1962 to assess the programmes for the removal of untouchability.<sup>8</sup> A survey was conducted in Purandar Taluka of Pune district which shows the problems of the Harijans in regard to water facilities and other discriminations.<sup>9</sup> Another survey shows the similar results.<sup>10</sup> This survey was conducted by Harijan Sevak Sangh in 192 villages of Maharashtra. In all these surveys, the aspects covered are residence, water supply, entry into hotels and temples, barber and laundry services, and participation in certain village festivals.

We have not gone into the causative and diagnostic aspects of untouchability and social disabilities. Our purpose is only to map out the manifestations and forms of untouchability. However, it is very clear that untouchability in public places situated in larger complexes, such as big villages,

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8. Kulkarni, M.G., Report on the Survey to assess the programme for removal of untouchability in Maharashtra State, 1962 in Gare G., and Limaye, S. (ed.) op. cit.

9. Ibid. pp. 45-47.

10. Ibid. pp. 47-162.

small towns and towns etc. is less compared to the small villages. This dimension of untouchability must be examined thoroughly. It is not simply a matter of the size of the settlement, but is more a matter of the visibility and invisibility of the practice of untouchability and enforcement of norms to control untouchability. In fact, it refers to a contradictory situation. For example, the norm (not legal) is that untouchability should be practised in the small villages by a caste Hindu. If he does not adhere to it, he is liable to punishment by his caste fellows. Therefore, the practice of untouchability must be visible. Even if it is visible to those who enforce law meant against untouchability, cannot do much because it may not be viable for them as the entire community with some exceptions may be deprived of the patronage of the upper caste elite. Harijans may revolt against the enforcement agency. The other situation is that even if the untouchability is practised, it is not necessary to make it visible; because visibility may invite punishment from law-enforcing agencies. In such a situation the caste-fellows are not found in the same locality or neighbourhood and they may not get united against one who has been found guilty of practicing untouchability. Therefore, he should make an impression at least apparently, that he does not practise untouchability. There are two different situations, and we could examine the existing legislation that how it applies to such diverse situations and various manifestations and forms of untouchability.

In a recent article Dilip Padgaonkar<sup>11</sup> has reviewed the findings of the surveys conducted regarding the plight of the Harijans of Maharashtra. His view is that it is wrong to assume that the spread of education, industrialization and urbanization has blurred caste distinctions and increased awareness among the Harijans of their rights. Padgaonkar has based his analysis mainly on the survey conducted by Gare and Limaye. Other work referred by Padgaonkar is the survey by Vasant Deshpande.<sup>12</sup> Both the studies are based on the attitude of the Harijans and educated Harijan youth. These surveys show that education and economic development have improved the conditions of the Harijans of Maharashtra; but also created numerous problems for them. It is really very difficult to say that, untouchability has reduced because the Harijans are allowed to fetch water in some villages from the wells of caste Hindus. If the relation between Harijans and Caste Hindus are examined in regard to some other aspects, probably one could find more rigidity compared to the relations found between Harijans and caste Hindus of these villages where Harijans are not allowed to fetch water from the public wells situated in the localities of the caste Hindus. Several such hypothetical questions could be formulated to assess the magnitude of untouchability. Therefore, untouchability must be seen from over-all gestalt and not on the basis of one type of relationship or the other, one facility or the other, and so on so forth.

11. Padgaonkar, Dileep, "Plight of the Harijans: Findings of Surveys in Maharashtra," The Times of India 12th August, 1978.

12. Ibid.

CHAPTER - FIVE

Conclusion

### Conclusion

While concluding this chapter one or two observations we would make regarding the nature of untouchability and the role of legislation. Kusum K. Premi<sup>13</sup> has raised two pertinent questions : 1) To what extent can this educational progress be attributed to the special concession ? 2) Is the scheme of special facilities conceived in the spirit of ensuring equality to all the members of the Scheduled Castes or in the process, do they suffer from deficiencies that tend to create certain subtle inequalities among them.

A number of studies have shown that post-matric scholarships are not optimally and equally used by the Untouchable students. It has created other kinds of problems also in regard to higher education. However, the contrary view is that it would not have made progress to large extent if these facilities were not extended to them. Premi concludes that education among Scheduled Castes, is not filtering down as expected on equal basis for unequal groups hence no true equality. Therefore, the assumption that all the Harijans are equal, is not correct. This also reflects upon the role of legislation in bringing about equality among the Scheduled Castes. These observations also contribute to the formulation of more hypotheses of the type we have mentioned earlier.

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13. Premi, Kusum K., 'Educational opportunities for the Scheduled Castes: Role of Protective Discrimination in Euqlization,' Economic and Political Weekly, Vol. 9 No. 45 & 46, 1974, pp. 1902-10.  
'Scheduled Castes and Educational Opportunities' Indian Journal of Social Work, Vol. 37, No. 3. 1976. pp. 251-59.

We have examined the phenomenon of untouchability from a structural point of view, that is, in terms of the position of untouchables vis-a-vis other sections. Hierarchy among the untouchables has also been analysed. The basic question before us is how legislation could bring about change in this age-old institution. Legislation has created some positive psychological impact on the untouchables, but has also created problems for them in more than one aspects of their life. Moreover, role of legislation in bringing about change in the position of individuals cannot be definitely attributed to legislation. The constitutional provisions and safeguards have certainly helped to those untouchables particularly who were better off than others. Dr. Ambedkar preferred even such a change in the absence of any other possibility.

Thus, the basic points which we have discussed are related to the nature of untouchability, untouchability and inequality, relations between untouchables and caste Hindus, the nature and role of legislation in eradication of untouchability, role of extra-systemic factors in lessening of untouchability and nature of inequality among untouchables. At theoretical and analytical levels 'Marxian', 'functional' and 'non-antagonistic' views have been discussed. After having analysed these views we have observed that fluidity of rules and regulations related to caste and untouchability cannot bring about expected changes in economic and power

positions of the untouchables. Punitive legislation also has not done much for the Harijans. However, protective legislation (safeguards, reservations etc.) has brought about noticeable change in the position of some sections of untouchables. Diffusion of ideas related to equality and means of communication, awareness about legislation etc. have not produced the expected results.

Since untouchability refers to relations between lower and higher caste groups, and between the poor and the rich people, the abled don't allow the disabled (untouchables) to become able. We have cited several examples of untouchables, disabilities, and the role of caste Hindus in the perpetuation of this institution by discriminatory treatment, exploitation and oppression. Practice of untouchability depends upon the social structure of a given village, population and region etc.

The lower castes have not been successful against the upper castes in legal battles. The upper castes have not been losers as they have better financial position, and support of police and administration. However, observance of untouchability in traditional sense has decreased in public places to a large extent. In domestic dealings untouchability is observed. The reality is that the ritual basis of untouchability is losing ground, but it is becoming more of a class phenomenon. This is why constitutional safeguards have brought about more concrete results than any other mea-



asures. Untouchability has been a dynamic institution, and it has its adaptations and contradictions.

The untouchability offence Act, 1955 does not have significant impact upon the phenomenon of untouchability. The Act has been publicised equally in all the states. Awareness about the Act among the police, Harijans, and caste Hindus is negligible. There have been violations of the UQA, but action against the violators is quite nominal, and even the punishment given to the defaulters has not been activated. We have analysed these aspects of UQA from 1955 to 1971. A smaller number of cases have been registered. An year-wise analysis of cases does not indicate any pattern in the increase or decrease of the cases. Maharashtra has been ahead of other states, in the publicity, awareness about UQA, and registration of cases under the Act.

The untouchables of Maharashtra have been more beneficiary than the Harijans of other states. They have been doubly benefitted: (i) by conversion to Buddhism; and (ii) by safeguards and provisions given in the constitutions. It is a contradictory situation, at least theoretically and legally. Those who convert to other regions, don't remain Scheduled Castes, but the Mahars of Maharashtra have converted, and informally retained their native position to have benefits of both sides. Thus conversion to Buddhism, constitutional safeguards, social reformers and workers and Dalit Panther movement have contributed to the improvement of the condition of Harijans.

Finally, the law cannot bring about desired changes in the institution of untouchability due to the problems we have listed in the foregoing discussion. Besides this, the law cannot apply equally to all those who are 'unequal,' both caste Hindus and the Scheduled Castes.

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A P P E N D I C E S

APPENDIX A  
THE UNTOUCHABILITY (OFFENCES) ACT, 1955

Untouchability has been abolished and its practice in any form is forbidden under article 17 of the Constitution. The Untouchability (Offences) Act, which received assent of the President on the 8th May, 1955, was passed by Parliament to prescribe punishment for the arising therefrom and for matters connected therewith. The Act is reproduced below :

THE UNTOUCHABILITY (OFFENCES) ACT, 1955 (XXII of 1955)

(Received Assent on 8.5.55)

An Act to prescribe punishment for the practice of "Untouchability", for the enforcement of any disability arising therefrom and for matters connected therewith.

Be it enacted by Parliament in the Sixth Year of the Republic of India as follows :-

1. Short title, extent and commencement.

- (1) This Act may be called the Untouchability (Offences) Act, 1955.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date<sup>a</sup> as the Central Government may, by notification in the Official Gazette, appoint.

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<sup>a</sup> 1st June 1955 - Vide notification No. S.R.O. 1102, dated the 23rd May, 1955, Gazette Extraordinary, Part II, Section 3. Page 971.

2. Definitions. In this Act, unless the context otherwise requires, -

- (a) 'hotel' includes a refreshment room, a boarding house, a lodging house, a coffee house and a cafe;
- (b) 'place' includes a house, a building, a tent, and a vessel;
- (c) 'Place of public entertainment' includes any place to which the public are admitted and in which an entertainment is provided or held;

Explanation. - 'Entertainment' includes any exhibition, performance, game, sport and any other form of amusement;

- (d) 'place of public worship' means a place by whatever name known, which is used as a place of public religious worship or which is dedicated generally to, or is used generally by, persons professing any religion or belonging to any religious denomination or any section thereof, for the performance of any religious service, or for offering prayers therein; and includes, all lands and subsidiary shrines appurtenant or attached to any such place ;
- (c) 'shop' means any premises where goods are sold

either wholesale or by retail or both wholesale and by retail and includes a laundry, a hair cutting saloon and any other place where services are rendered to customers.

3. Punishment for enforcing religious disabilities.

Whoever on the ground of "untouchability" prevents any person -

- (a) From entering any place of public worship as open to other persons professing the same religion or belonging to the same religious denomination or any section thereof, as such person; or
- (b) from worshipping or offering prayers or performing any religious service in any place of public worship, or bathing in, or using the water of, any sacred tank, well, spring or water course, in the same manner and to the same extent as is permissible to other persons professing the same religion, or belonging to the same religious denomination or any section thereof, as such person;

shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Explanation.- For the purposes of this section and section 4 persons professing the Buddhist, Sikh or Jaina religion or persons professing the Hindu religion in any of its forms or developments including Virashaivas, Lingayats, Adivasis, followers of Brahma, Prarthana, Arya Samaj and the Sraminarayan Sampraday shall be deemed to be Hindus.

4. Punishment for enforcing social disabilities.

Whoever on the ground of "untouchability" enforces against any person any disability with regard to -

- (i) access to any shop, public restaurant, hotel or place of public entertainment; or
- (ii) the use of any utensils and other articles kept in any public restaurant, hotel, dhamshala, sarai or musafirkhana for the use of the general public or of persons professing the same religion, or belonging to the same religious denomination or any section thereof, as such person; or
- (iii) the practice of any profession or the carrying on of any occupation, trade or business; or
- (iv) the use of, or access to, any river, stream, well, tank, cistem, water-tap or other watering place, or any bathing ghat, burial or cremation ground, any sanitary convenience, any

road, or passage, or any other place of public resort which other members of the public, or persons professing the same religion, or belonging to the same religious denomination or any section thereof, as such person, have a right to use or have access to; or

(v) the use, of, or access to, any place used for a charitable or a public purpose maintained wholly or partly out of State funds or dedicated to the use of the general public, or persons professing the same religion, or belonging to the same religious denomination or any section thereof, as such person; or

(vi) the enjoyment of any benefit under a charitable trust created for the benefit of the general public or of persons professing the same religion or belonging to the same religious denomination or any section thereof, as such person; or

(vii) the use of, or access to, any public conveyance; or

(viii) the construction, acquisition, or occupation of any residential premises in any locality whatsoever; or



- (ix) the use of any dharmshala, sarai or musafir-khana which is open to the general public, or to persons professing the same religion or belonging to the same religious denomination or any section thereof, as such person; or
- (x) the observance of any social or religious custom, usage or ceremony or taking part in any religious procession; or
- (xi) the use of jewellery and finery;

shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

5. Punishment for refusing to admit persons to hospitals, etc. Whoever on the ground of "untouchability"

- (a) refuses admission to any person to any hospital, dispensary, educational institution or any hostel attached thereto, if such hospital, dispensary, educational institution or hostel is established or maintained for the benefit of the general public or any section thereof; or
- (b) does any act which discriminates against any

any such person after admission to any of the aforesaid institutions;

shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

6. Punishment for refusing to sell goods or render Services. Whoever on the ground of "untouchability" refuses to sell any goods or refuses to render any service to any person at the same time and place and on the same terms and conditions at or on which such goods are sold or services are rendered to other persons in the ordinary course of business shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

7. Punishment for other offences arising out of untouchability.

- (1) Whoever -
  - (a) Prevents any person from exercising any right accruing to him by reason of the abolition of "untouchability" under article 17 of the Constitution; or
  - (b) molests, injures, annoys, obstructs or causes or attempts to cause obstruction to any person in the exercise of any such right or molests,

injures, annoys or boycotts any person by reason of his having exercised any such right; or

- (c) by words, either spoken or written, or by sign or by visible representations or otherwise incites or encourages any person or class of persons or the public generally to practise "untouchability" in any form whatsoever.

shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Explanation.- A person shall be deemed to boycott another person who -

- (a) refuses to let to such other person or refuses to permit such other person, to use or occupy any house or land or refuses to deal with, work for, hire for, or do business with, such other person or to render to him or receive from him any customary service, or refuses to to any of the said things on the terms on which such things would be commonly done in the ordinary course of business; or
- (b) abstains from such social, professional or business relations as he would ordinarily maintain with such other person.

(2) Whoever -

(i) denies to any person belonging to his community or any section thereof any right, or privilege to which such person would be entitled as a member of such community or section, or

(ii) takes any part in the ex-communication of such person,

on the ground that such person has refused to practise "untouchability" or that such person has done any act in furtherance of the objects of this Act, shall be punishable with imprisonment which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

B. Cancellation or suspension of licences in certain cases. When a person who is convicted of an offence under section 6 holds any licence under any law for the time being in force in respect of any profession, trade, calling or employment in relation to which the offence is committed, the court trying the offence may, without prejudice to any other penalty to which such person may be liable under that section, direct that the licence shall have effect as if it had been passed by the authority competent to cancel or suspend the licence under any such law.

Explanation.- In this section, 'licence' includes a permit or a permission.

9. Resumption or suspension of grants made by Government. Where the manager or trustee of a place of public worship which is in receipt of a grant of land or money from the Government is convicted of an offence under this Act and such conviction is not reversed or quashed in any appeal or revision, the Government may, if in its opinion the circumstances of the case warrant such a course, direct the suspension or resumption of the whole or any part of such grant.

10. Enhanced of offence. Whoever commits any offence under this Act shall be punishable with the punishment provided for the offence.

11. Enhanced penalty on subsequent conviction. Whoever having already been convicted of an offence under this Act or of an abetment of such offence is again convicted of any such offence or abetment, shall, on every such subsequent conviction, be punishable with both imprisonment and fine.

12. Presumption by courts in certain cases. Where any act constituting an offence under this Act is committed in relation to a member of a Scheduled Caste as defined in clause (24) of article 366 of the Constitution, the court

shall presume, unless the contrary is proved, that such act was committed on the ground of "untouchability."

13. Limitation of jurisdiction of civil courts.

(1) No civil court shall entertain or continue any suit or proceeding or shall pass any decree or order or execute wholly or partially any decree or order if the claim involved in such suit or proceeding or if the passing of such decree or order or if such execution would in any way be contrary to the provisions of this Act.

(2) No court shall, in adjudicating any matter or executing any decree or order, recognise any custom or usage imposing any disability on any person on the ground of "untouchability".

14. Offences by Companies. (1) If the person committing an offence under this Act is a company, every person who at the same time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this subsection shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent of any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purposes of this section, -

- (a) 'company' means any body corporate and includes a firm or other association of individuals; and
- (b) 'director' in relation to a firm means a partner in the firm.

15. Offences under the Act to be cognizable and Compoundable. Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898) -

- (a) every offence under this Act shall be cognizable; and
- (b) every such offence may, with the permission of the court, be compounded.

16. Act to override other laws. Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, or any custom or usage or any instrument having

effect by virtue of any such law or any decree or order of any court or other authority.

17. Repeal. The enactments specified in the Schedule and hereby repealed to the extent to which they or any of the provisions contained therein correspond or are repugnant to this Act or to any of the provisions contained therein.

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Source: Govindaraj, Ratna G. The Indian Constitution - A case study of Backward Classes, Associated Univ. Press, New Jersey, USA, 1971, pp. 337-344.



APPENDIX B

Legislative measures adopted by various States/Union Territories for removal of untouchability.

The States which passed various Acts prior to Untouchability (Offences) Act, 1955, in this direction are the following :

S.No.	State	Legislation adopted
1.	Andhra Pradesh	(i) The Madras Removal of Civil Disabilities Act, 1938. (ii) The Hyderabad Harijan Temple Entry Regulation, 1958 Faci. (iii) The Hyderabad Harijan (Removal of Social Disabilition) Regulation, 1958 faci.
2.	Assam	No Act was passed.
3.	Bihar	Bihar Harijan (Removal of Civil Disabilities) Act, 1946.
4.	Gujarat	(i) The Bombay Harijan Removal of Social Disabilities Act, 1946. (ii) Bombay Harijan Temple Entry Act, 1947. (iii) Saurashtra Harijan Removal of Social Disabilities Ordinance of 1949.
5.	Jammu & Kashmir	No Act was passed.
6.	Kerala	(i) Madras Removal of Civil Disabilities Act, 1938. (ii) The Travancore Cochin Removal of Social Disabilities Act, 1125 N.E. (iii) The Travancore Cochin Temple Entry (Removal of Disabilities) Act, 1950 in the erstwhile T.C. Area.
7.	Madhya Pradesh	(i) Central Province and Berar Scheduled Caste (Removal of Civil Disabilities) Act, 1947. (ii) The Central Province and Berar Temple Entry Authorisation Act, 1947.

Conted.....

S.No.	State	Legislation adopted
8.	Madras	(iii) The Madhya Pradesh Harijan Ayogta Nivaran Vidhan, 1949. (i) The Removal of Civil Disabilities Act, 1948. (ii) Madras State Disabilities Act, 1947. (iii) The Madras Temple Entry Authorisation Act, 1947.
9.	Maharashtra	(i) The Bombay Harijan (Removal of Civil Disabilities) Act, 1947. (ii) The Bombay Harijan Temple Entry Act, 1947.
10.	Mysore	(i) The Removal of Civil Disabilities Act, 1948. (ii) The Mysore Temple Entry Authorisation Act, 1948.
11.	Orissa	(i) Orissa Civil Disabilities Act, 1946. (ii) Temple Entry Act, 1948.
12.	Punjab	The East Punjab (Removal of Religious and Social Disabilities) Act, 1948.
13.	Rajasthan	No Act was passed.
14.	Uttar Pradesh	The United Provinces Removal of Social Disabilities Act, 1947.
15.	West Bengal	West Bengal Hindu Social Disabilities Removal Act, 1948.

Source : Quoted from: Report of the Committee on Untouchability, Economic and Educational Development of Scheduled Castes, Government of India, New Delhi, 1969, pp. 4-5.

Publicity of the UQA, 1955 by Various State and Union Territory Governments

S1. No.	Name of State/ Union Territory	No. of Languages in which the Act was published	No. of copies	No. of ways of distribution	Any check imposed for the proper distribution	Any proposal to get more copies printed
1.	Andhra Pradesh	N.P.*				
2.	Bihar	N.P.				
3.	Gujarat	N.P.				
4.	Jammu & Kashmir	N.P.				
5.	Kerala	1	53,500	7	Distributed properly	No.
6.	Madhya Pradesh	N.P.				
7.	Maharashtra	5	200,000	3	No	No
8.	Tamil Nadu	3	3000	Sold on payment	No	No
9.	Karnataka	1	1,000	3	No	No
10.	Orissa	1	500 (1961)	Not distributed***	No	No
11.	Rajasthan	1	2,000	N.A.	N.A.	N.A.**
12.	Uttar Pradesh	1	42,000	6	No	No
13.	West Bengal	1	4,000	4	No	No
14.	Dadra & Nagar Haveli	N.P.				
15.	Goa, Daman & Diu	N.P.				
16.	Laccadives	N.P.				
17.	Manipur	1	500 (1957)	7	No	No
18.	Pondicherry	1	5,000	6	By Harijan Welfare Officer	No

\* N.P. = Not published

\*\* N.A. = Not Available

\*\*\* Figures given in bracket beneath the number of copies indicate the year of publication.

Source: Quoted from: Report of the Committee on Untouchability, Economics and Educational Development of Scheduled Castes and Connected documents, 1969, pp. 44-45.

APPENDIX D

Table showing the number of cases dealt with  
Untouchability (Offences) Act, 1955

Year	Number of cases registered with the Police	Number of cases challenged	Position of disposal of the end of the year			
			Convicted	Acquitted	Compounded	Pending
1955	100	180	80	12	12	76
1956	693	599	149	106	156	188
1957	492	415	87	35	85	208
1958	550	477	127	83	92	175
1959	481	401	105	70	82	144
1960	506	438	89	74	122	153
1961	459	438	187	141	138	52
1962	389	338	77	91	81	59
1963	397	316	78	48	80	110
1964	484	425	196	71	67	91
1965	366	321	136	52	46	87
1966	488	447	199	89	85	76
1967	353	313	136	56	56	85
1968	214	184	35	39	53	84
1969	329	272	48	25	70	196
1970	364	291	50	59	107	253
1971	526	NA*	55	NA	NA	NA
<b>Total</b>	<b>7304</b>	<b>5755</b>	<b>1534</b>	<b>1051</b>	<b>1332</b>	<b>2072</b>

\* Not available

Source : Adapted from Report of the Commissioner for Scheduled Castes & Scheduled Tribes, 1971-72 & 1972-73, Ministry of Home Affairs, Government of India, New Delhi, 1974, pp. 343.

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