

CASTE, RACE AND THE CONSTITUTION

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India is not only a union of 27 States, but it is also a union of 5,000 castes. A recent study undertaken by Anthropological Survey of India has recorded the existence of 4693 castes. (Singh 1998 : xiii)

A Caste is a class based on descent. They are arranged in a heirarchical order and are stratified. No two castes have the same social status. Every caste has its own rank. "In fact it is more realistic to say that there are probably as many hierarchies as there are castes in India. To believe that there is a single caste order to which every caste, from Brahmin to untouchables, acquiesce ideologically, is a gross misleading of facts on the ground". (Gupta, 2K : 1)

Connubium and commensality are the hallmarks of a Hindu caste. Purity and pollution are an integral part of this graded inequality. Endogomy is the rule that has perpetuated the caste system. The plurality of castes and their continuity has no parallel in any other social order in the world.

Caste is more deep rooted than any other social Institution. Conversion is possible from one religion to another. Conversion is also possible from one language to another. But conversion from one caste to another is unknown. By a change of religion one may become casteless. But that status is temporary and it is only in a state of suspended animation. For example, if a Scheduled Caste Hindu becomes a Christian, caste disappears only temporarily. On his re-conversion to Hindu fold, he will not only become a Hindu, but he will revert to his original caste, if he had lost it at all. (ANBALAGAN V. B.DEVARAJAN - AIR 1984 SC 411). Such is the fate of a Hindu that even if he ceased to be a Hindu, his original caste continues to haunt him.

The membership of a Caste is based on birth and birth alone. Social status is dertermined on the basis of ascription.

IS CASTE A RACE ?

It is undisputed that the present day caste distinctions in India have their roots in the *varnashrama* of Hindu religion. The *varnashrama* itself is a division of the two races, namely, Aryan and Dravidian.

Dr. Ambedkar attributes the race theory to the western writers and sums it up as follows :

(i) The people who created the Vedic literature belonged to the Aryan race ;

(ii) This Aryan race came from outside India and invaded India;

(iii) The natives of India were known as Dasas and Dasyus who were racially different from the Aryans.

(iv) Aryans were a white race:

Dasas and Dasyus were a black race:

(v) The Aryans conquered the Dasas and Dasyus.

(vi) Dasas and Dasyus after they were conquered and enslaved were called Shudras.

(vii) The Aryans cherished colour prejudice and therefore formed the *chaturvarnya* whereby they separated the white race from the black race such as the Dasas and Dasyus.

“These are the principle elements in the western theory about the origin and position of the Shudras in the Indo-Aryan Society. Whether it is valid or not is another matter. But this much must certainly be said about it that after reading the Brahminic theories that their long and tedious explanations attempting to treat a social fact as a divine dispensation, one cannot but feel a certain amount of relief in having before oneself a theory, which proceeds to give a natural explanation of a social fact”. (Ambedkar, 1990 : 65).

He however strongly disputes that Shudras belong to a different race and puts forward his own theory that Shudras were Kshatriyas. Brahmins

refused to perform Upanayana to Shudras and degraded them into a separate varna.

Anthropologist S.V. Ketkar even while doubting the correctness of the race theory concludes “It is true that in some parts the higher castes, are of Aryan descent and the lower ones are of Dravidian descent but this is not universal” (Ketkar, 1998 : 170).

Be that as it may. There is no dispute that the untouchables were outside the four fold varnashrama. There is also no dispute that they always remained outside *varnasankara* mixing of the races, that was singularly responsible for creation of the numerous castes and sub-castes through inter varna marriages among Hindus. So it can safely be concluded that the untouchables were racially different from rest of the caste Hindus and untouchability is, in its form and essence, racial discrimination *per se*.

CASTE SEGREGATION APART IS APARTHEID

We need not get bogged down by this controversy. Caste is the most complex phenomenon. No single theory can conclusively establish its foundations. For our present purpose we are guided by the expanded definition of racial discrimination as contained in Article 1 of the “International Convention on the Elimination of All Forms of Racial Discrimination”(CERD) adopted by the United Nations General Assembly, Resolution on December 21, 1965. Article 1 reads -

“1. In this convention, the term racial discrimination shall mean any distinction, exclusion, restriction, or preference based on race, colour, descent or national or ethnic origin, which has the purpose or effect of nullifying or impairing recognition, enjoyment or exercise, on an equal footing of human rights and fundamental freedom in the political, economic, social, cultural, or any other field of public life”.

There is no dispute that there exists in India caste discrimination, which is deep rooted and omnipresent. It has brought about large scale segregation. In Karnataka alone there are about 30,000 segregated habitats of untouchables and other low castes and tribes, which outnumber the number of revenue villages where the upper caste people live.

The Scheduled Caste Holeyas, Madigas, Voddas & Lambanis, the Scheduled Tribes like Nayaka, Beda and the Backward Tribes like Golla and Uppara live in these hamlets. Education has been denied to them for centuries on the basis of caste. Drinking water is denied on the basis of caste. Temple entry is denied on the basis of caste. Even basic social services like hair-cutting, and dhobhi services are regulated on the basis of caste.

Untouchability, unapproachability, unseeability and even unthinkability are entirely rooted in caste. Even South African Apartheid did not carry discriminations to this barbaric level much less was there any whisper of pollution by the whites. It is nobody's case that the caste discrimination in India is not based on descent much less is it their case that caste system has not denied recognition, enjoyment and exercise, on an equal footing, basic human rights and fundamental freedoms in the political, economic, social, cultural and other fields of public life.

Above all we should not forget the object of the World conference against Racism. It is to promote egalitarianism and eradicate all forms of discrimination based on birth and descent. Caste is undoubtedly one such form of discrimination. Its very existence is a shame and blot on humanity. Art. 1 of the Universal Declaration of Human Rights declares : "All human beings are born free and equal in dignity and rights". In article 2 it prohibits discrimination, *inter alia*, on grounds of social origin, birth or other status. Similarly International Covenant on Civil and Political Rights, 1966 prohibits discrimination, *inter alia*, on grounds of social origin, birth or other status.

No signatory to this declaration, more so India which is at the forefront to eradicate distinctions, restrictions and discriminations opposed to these Declarations, can oppose a discussion by a world conference to combat caste segregations and inequalities.

According to the New Shorter Oxford English Dictionary, T.I. Edition, the word 'apartheid' is a Afrikaans word literally meaning separateness. This word is derived from the Dutch word 'apart' meaning apart + 'heid' meaning hood. Therefore it literally means 'aparthood'.

Any separateness or segregation that keeps castes apart is also apartheid. Hindus are born in castes, work in castes, marry in castes, die in castes and are even buried in caste cemeteries always apart. This is nothing but apartheid. A nation which took pride in inviting Nelson Mandela cannot now push the caste apartheid under the carpet.

It is therefore beyond doubt that as per Article 1(1) of the CERD includes all forms of caste discrimination meted out to the Madigas, Holeyas, Chamars and other untouchables numbering over 240 million.

Pre-Constitutional efforts to tackle caste discrimination :

Before the British arrived in India caste dominated the law and the administration of justice. As a matter of fact the entire State apparatus and the law was geared up to maintain and consolidate the caste stratification of

the society. The caste system had not only the sanction of law, but also of the State and the Religion. The Mandal Report lists a series of such sanctions leading to barbaric practices entirely based on caste.

Thus by the time the British arrived in India, caste discriminations were settled and the entire society was divided into thousands of compartmental wings regimented to follow caste rules in all walks of life, private and public. Caste ruled the fate of the man in political, educational, social, cultural and economic spheres. Even his occupation had to be in accordance with the caste rules. One and the only form of acquiring membership of a caste was by birth. These discriminations were entirely based on descent.

On their arrival the British administration was not very keen to interfere with the social order in India. As a matter of fact there is a vital difference between European colonies in the Americas and Africa, and their colony in India. In the earlier two settlements the European invader had gone there to settle. Secondly they not only brought about social and cultural changes in those societies, but also ensured overall development of the nations raising the living standards of the original inhabitants also. They mixed slowly but freely with the indigenous people and brought about a radical transformation over a period of time. In all these countries, liberty, equality and fraternity were inculcated as social, economic and political values. More importantly the invaders had been there to settle and not plunder and loot. They made it their home-land and dedicated themselves to the development of the societies where they lived. The United States, Canada, South Africa are good examples of such developed former colonies of Europeans.

In contrast the British came to India only for purposes of trade. Throughout their stay in India their interest was only to make gains and return to their mother-land. They never intended to settle down in India and make it their home-land. For this purpose they were very reluctant to develop the nation as a whole. The only reforms they brought about in the fields of education and communication were limited to get necessary local assistance for their administration and to enable them to move the troops through out the length and breadth of the country. Particularly in the social sector the British followed a hands off policy. They realised that unlike the colour discrimination which was transparent and simple, caste discrimination was deep rooted and complex phenomenon of a frozen social order. They found caste was more deep rooted than religion or colour. Even though there were attempts to convert from one religion to another no attempt was made to impair the caste system. They also realised the difficulty in meddling with the caste distinctions or upset the well entrenched pyramid of caste hierarchy. The failure of Buddhism, Jainism, Sikhism and Veerashaivism against Hindu Caste system must have scared them from venturing into any act of social reform. It

is in these circumstances that the Britishers first insulated themselves and their administration from the caste system.

The following measures may be listed in this behalf :

- (i) Section 8 of the Bengal Regulations III of 1793 ;
- (ii) Section 21 of the Bombay Regulation II 1827 ;
- (iii) Caste Disabilities Removal Act, 1850 ;
- (iv) Section 9 of the Civil Procedure Code making caste a non justiciable issue keeping it out of 'a civil dispute'.

This withdrawal of the British from administering the caste questions had a further consolidating effect on the caste system itself.

“Now, law is not the only sanction which goes to sustain social institutions. Institutions are sustained by other sanctions also. Of these, religious sanction and social sanction are the most important. The Varna system has a religious sanction, the Varna system has the fullest social sanction from the Hindu society. With no legal prohibition, this religious sanction has been more than enough to keep the Varna system in full bloom”.

(Ambedkar, 1990 : 13)

The only mass movement which had made a great social impact during the British regime was the freedom movement. The freedom movement was spear headed by the Congress Party. The Congress Party was dominated by orthodox upper-castes. In the fight against British, it happened frequently, to mix politics with religion resulting in perpetuating the caste inequalities. After the frustration of Ambedkar's campaign for separate electorate and driving out Jinnah from Congress, the orthodox elements in Congress gained an upper hand. As a result, during the pre-independent days, no popular effort to destroy caste hegemony was possible, Ambedkar's sustained efforts and

Ramaswamy Naikers self-respect movement notwithstanding. It is in this situation that the Constituent Assembly, began its deliberations.

The limitations of the Constituent Assembly.

The Constituency Assembly elections in July 1946 brought the Congress to power. The Congress enjoyed monopoly in the Assembly deliberations. As a matter of fact the very process of elections had inherent limitations. The restricted franchise established by the VI Schedule of the Government of India Act, 1935 excluded the majority of countrymen who were peasants and labourers. The electoral college was confined to tax payers, big property holders and highly qualified persons, constituting only 28.5% of the adult population of the provinces. Economically and socially depressed persons were virtually disenfranchised. (Austin, 1966 : 10).

According to the data made available by Granville Austin in his book, “the Indian Constitution : the Corner Stone of a Nation”, out of about 161 members of the Constituent Assembly, of the Hindu members over 75% represented the Dwija castes. There were only 7 Scheduled Caste representatives. All the 7, including Dr. Ambedkar, vowed their membership to Congress party. It is this Constituent Assembly which had to evolve the policies and programmes to usher in equality.

The partition of the country and the ensuing genocide had demoralised the secular forces in general and the minorities in particular. The Muslims, the Christians and the Sikhs were in no mood to make big demands. The Socialists had split from Congress early in 1948 to become a separate party. They had boycotted the Assembly elections. That decision had kept stalwarts like Dr. Ram Manohar Lohia, Jayaprakash Narayan, Aruna Asaf Ali, Acharya Narendra Dev, Purushotam Trikam Das, Kamala Devi, Achut Patwardan and Ashok Mehta out of the Constituency Assembly. The assassination of Gandhiji had consolidated the leadership of the Congress oligarchy headed by Nehru.

In this situation the voice of men like Ambedkar to usher in a casteless society was not heard. Ambedkar on his part could not even muster necessary strength to put it on the draft Constitution his own draft of the following provision :

“Any privilege or disability arising out of rank, birth, person, family, religion or religious usage and custom is abolished”.

Not even the Drafting Committee accepted this provision. In its place the present Article 17 based on K.M. Munshi’s draft of the fundamental rights

was incorporated and enacted. Even the Scheduled Caste members such as Jagajivan Ram did not support or press for the draft suggested by Ambedkar. In the circumstances the Assembly failed to take a bold decision to abolish caste. Thus establishment of a casteless society as a national goal, does not find place even in the directive principles or the preamble to the Constitution (Wad, 1984 : 17).

The collective rights of the people on the constitutional goal to achieve liberty, equality liberty and fraternity, are found in the Directive Principles of State Policy of our Constitution. But these principles have been made unenforceable by virtue of the provision enacted under Article 37. As a result we have today enforceable rights of individuals while the collective rights under the Directive Principles of State policy, have been rendered non-justiciable.

The Directive Principles of State Policy are modelled on similar policies contained in the Irish Constitution. The Constitutional Advisor to the Assembly Sir B.N.Rau had discussions with President De Velara on the working of the Directive Principles in relation to the Fundamental Rights under the Irish Constitution. On the basis of that experience Sir B.N. Rao proposed an amendment so as to emphasise fundamental nature of the directive principles and to add a clause to place the Directive Principles on a higher pedestal than the Fundamental Rights. The minutes of the Drafting Committee show that these amendments were either not considered or not accepted (Seervai, 1993 : 1925). With this failure the efforts to remove caste inequalities were finally doomed.

CONSTITUTION AND CASTE ANNIHILATION

A close perusal of the debates in the Constituent Assembly discloses the tension under which the issues concerning caste were debated. Stiff opposition was seen every time provision in the draft Constitution to bring about social equality was considered. In the process with all its limitations, the Constituent Assembly could enact only a very few provisions to build a casteless society. Notable provisions that came to be enacted are the provisions of reservations in services under the State under Article 16(4) of the Constitution and political reservations contemplated under Articles 330 and 332. Beyond this nothing could be achieved. Be that as it may, the Constitution boldly

proclaimed, in its Preamble, the goal of accomplishing social justice and equality. Article 14 emphatically laid down the principle of equality. Articles 15,16 and 29 further elaborated the concept and prohibited discrimination on the ground of religion, race and caste. However, Article 15 confined the prohibition against discrimination only to State action. Article 16 confined it to employment under the State, while Article 29 restricted it to educational institutions. Establishment of a casteless society as a national goal, does not find place even in the directive principles or preamble to the Constitution.

In the circumstances it has become convenient to say that there is no Constitutional mandate to eradicate caste inequalities in the society. Even the provisions for uniform civil code contained in Article 44 of the Constitution is only a directive principle which has remained a dead letter till this day. While concluding that the Constitution surely provides a mandate to confine caste distinctions within the narrowest limits, Marc Galanter laments :

“The Constitution sets forth a general programme for the re-construction of Indian Society. In spite of its length, it is surprisingly undetailed in its treatment of the institution of caste and existing group structure in Indian society” (Galanter 1984 - 352).

Even the provisions of affirmative action contained in the Constitution are far from adequate. The entire private sector is under no obligation to do social justice to the Backward Castes, Scheduled Castes and Scheduled Tribes. In the Legislature reservation has been provided only in the Lower Houses. There is no reservation provided in the Council of States at the Centre and the Legislative Councils in the States, though reservation has been provided for teachers, graduates and local authorities. Only recently reservation has been provided in the local authorities. Reservation in political institutions has not helped removal of caste inequalities. Reservations operate in the constituencies with joint electorate and the beneficiaries are always in a minority. In order to get elected from such constituency, the representatives of the exploited castes, will have to be at the mercy of the majority exploiting castes. Unless a candidate serves the interest of the majority, the majority will never elect him . A potential candidate who could antagonize the majority, aggressively working for the welfare of his people, will never be elected. In order to contest and win from such constituencies they are also at the mercy of national political parties which are always under a high command of the upper -castes. The political parties do not field worthy candidates who could champion the cause of lower castes against the interest of the upper castes. This situation is better illustrated by Mr. B.P. Maurya, a national leader belonging to the Scheduled Castes, when he laments :

“This system does the Scheduled Castes no good because the people in the reserved seats belong to the party in power and are often incapable persons. Although they are educated they do not speak out against the party in power. They do not represent their people to the party and the Government, but represent the party in power to their people”(Quoted in Yadav - 1988 : 24).

A finding in a project report on SCs and STs commissioned by the State of Karnataka is revealing :

“... Political reservations minus concern for SC and ST problems has lead to serve personal and family interests so far. SC and ST political leaders by a curious combination of factors, built-in checks and personal limitations have not and cannot play the role expected of them. So there are politicians and no leaders among them” (Shankar, 1997 : 495).

This supplies the reason why Ambedkar strongly fought for separate electorate and succeeded, only to lose it in the Poona pact.

In any democracy an independent judiciary plays a vital role and is considered to be an arm of the social revolution. The Indian Judiciary is perhaps the most powerful judiciary ever to be found working under a written Constitution. The power of judicial review can strike down even an amendment to the Constitution. The judiciary has armed itself with all the powers to appoint Judges literally eliminating any role for the Executive in the appointment of Judges to the High Courts and Supreme Court. As a result the power of appointment of Judges is not accountable before any forum much less to the people of India. The failure of our Constitution to enact a provision for reservation in the higher judiciary has cost the nation very dearly. A similar situation obtained in the new South Africa after dismantling the apartheid. The author was invited along with his senior Sri. L.G. Havanur, the Chairman of the first Karnataka Commission for Backward Classes to deliberate over the policy of affirmative action to be incorporated in the Constitution of the the new South Africa. It is a matter of great pride that their contribution has yielded rich dividends. The Constitution of South Africa in its preamble recognises injustices of the past and believes that the people are united in their diversity and proposes to “heal the divisions of past and establish a society based on democratic value, social justice and fundamental human rights”. It enacts a categorical provision in section 174(2) relating to appointment of Judges in the following terms :

“S. 174(2). The need for the judiciary to reflect

the racial and general composition of South Africa must be considered when judicial officers are appointed”.

The cause of establishing a casteless society has suffered by the absence of a corresponding provision in the Indian Constitution.

The most important provision in the Constitution however, is Article 17 in the Fundamental Rights, Chapter, abolishing untouchability. Untouchability is the effect of caste discrimination. This provision is only attempting to abolish the effect without touching the cause. The most appropriate thing would have been to abolish caste or discrimination on the ground of caste in all walks of life, social, political and economic. The minimum that should have been done was to accept Ambedkar's draft provision quoted earlier and enact it in the fundamental rights chapter.

ACHIEVEMENTS UNDER THE CONSTITUTION

With no clear mandate to eradicate caste the working of the Constitution has encountered serious difficulties even in operating the enacted provisions. There is total lack of political will to tackle the caste inequalities. Even the impartial and dispassionate approach the Britishers provided could not be continued by the Indian rulers. Every institution created under the Constitution suffered because of the well entrenched caste prejudices. The upper castes cleverly manipulated and consolidated their leadership to the near exclusion of the backward castes, the Scheduled castes and the Schedule Tribes. Education and training received before independence came in very handy to maintain the status quo. No genuine efforts were put to remove caste distinctions

THE LEGISLATURE :

(a) Uniform civil code : The Legislature has failed to bring about a uniform Civil Code so as to ensure one rule governing all castes and communities in matters of succession, marriage, divorce, adoption and the like. Article 44 which mandates such a provision has remained a dead letter. Not even the minimum requirements that all marriages, to be valid, should be registered and should be between persons who have attained the age of majority are not enacted till this day.

(b) Untouchability: Untouchability is practised in India in several forms. Unapproachability, unseeability, unthinkability are all several dimensions of untouchability. There can be intervals in practice of untouchability all for the convenience of the perpetrators. During lucid intervals - lucid for the upper castes - out of necessity, an untouchable may be

approached. This operates at an individual level while the society continues to treat them as untouchables always, as in the case of barbers. Then it may be seasonal as in the case of women. To eradicate untouchability the Legislature has passed two enactments, namely, the Protection of Civil Rights Act in 1955 and the Scheduled

Castes and Scheduled Tribes (Prevention of Atrocity) Act in 1989. All that these laws provide for is making to practice untouchability a punishable offence. Abolition of untouchability by implication should have been considered as having abolished the cause of untouchability and therefore, the Legislature should have aimed at removing the cause of untouchability rather than confining itself to making untouchability a punishable offence. Further the first legislation confines only to the castes included in the Scheduled Castes list while the latter Act has been extended only to the castes and tribes included in the list of Scheduled Castes and Scheduled Tribes.

It is a matter of common knowledge that untouchability is practised not only against the Scheduled Castes but even against other lower castes. Often it is a graded practice of untouchability practised by the upper caste against the lower castes. Lower castes are subjected to social disabilities of various kinds. No provision has been enacted to remove these disabilities though quite a good number of them result in practice of untouchability. For example denial of commensality in various religious maths in India arranging for separate food for the Dwijas and others itself a form of untouchability. Dhobi castes have been subjected to various forms of untouchability including unseeability. Barber castes are also subjected to untouchability. It is only during intervals when a haircut is required that barbers are allowed to touch for purposes of hair-cutting. Otherwise they are treated as untouchables. Not only they are victims of untouchability they are even considered to be unseeables and unthinkableables also. In Chitradurga District of Karnataka they are better known as "Neneyabaradavaru" in Kannada meaning 'unthinkableables'. These practices are not prohibited by the Legislature so far. Further practice of untouchability is not confined only to Hindu castes. Dalit Christians are equally condemned to untouchability. No steps have been taken by the Legislature against practice of untouchability outside the Hindu-fold. In the rural areas women are treated as untouchables during menses. They are thrown out of the houses. They have to spend 3-5 days in open fields. In some castes (ex:Golla) pregnant women are thrown out at the time of delivery. They have to deliver the child and look after themselves for over a month in open fields or makeshift palmleaf sheds to shed pollution. Nothing is done against this inhuman practice.

It is thus seen that even the only provision for eradication of untouchability contained in Article 17 has not been fully implemented by the Legislature translating it into effective and all pervasive legislative enactments to root-out untouchability lock, stock and barrel.

(c) Towards eradication of caste discrimination : Article 15(1) prohibits discrimination on grounds of religion and caste. The Preamble to the Constitution ordains to secure to all citizens equality of status and promotion of fraternity. These provisions read with the Directive Principles of State policy mandate enactment of legislations to end the caste discrimination. Existence of the caste system and its continuation is a direct violation of Article 15, the Preamble and the Directive Principles of the State policy. Legislatures failed at least to prohibit succession and marriages within the caste. The Legislature kept the above constitutional provisions as dead letters in the Constitutions.

It is thus seen that the Indian Parliament and the State Legislatures have found it difficult to alter the status- quo make proper use of the constitutional provisions already enacted to legislate provisions to remove caste inequalities. Bold measures to eradicate caste system altogether by suitable amendments to the Constitution have not been attempted even.

THE EXECUTIVE;

Except a token representation given to the Scheduled Castes and Scheduled Tribes, here and there, is no accomplishment worth the name on the part of the Indian Executive to eradicate caste discriminations. Even the reservations for the backward castes was delayed by over forty years. On the other hand the Indian bureaucracy is firmly in the grip of the upper castes and has been effectively used to prevent the march of lower castes to end the widening gap between the upper castes and the lower castes. The colossal failure of the Executive, particularly in its failure to implement the two laws to prohibit untouchability is itself a standing testimony to the complicity of the Executive in perpetuating the caste discriminations in general and untouchability in particular. The attitude of the Indian bureaucracy is well illustrated by the following account of P.N.Huxer, in an interview to Granville Austin:

“Our Civil services.. are first of all to themselves and their nuclear family... (and beyond this to) making secure the future of our sons and daughters... and, if possible.... the members of our sub-caste, caste, community and region.”(16)

It was no wonder that the Indian bureaucracy made a determined effort to frustrate the implementation of the Mandal Report and on its failure to drag its feet in implementing the policy. One should not forget that the

bureaucracy is the first beneficiary of the existing caste inequalities and it feels threatened the moment reservations are operated to give representation, appointments, promotions and positions to the Scheduled Castes, Scheduled Tribes and there Backward Classes.

THE JUDICIARY

Indian Judiciary with its power of judicial review is the most powerful judiciary in the world. With the removal of Executive interference in appointment of Judges through its own judgments it has also emerged as the most independent judiciary. It has also become the most activist judiciary with the evolution of the Public Interest Litigation. However there is no perceptible contribution from it in the matter of eradication of caste inequalities. On the other hand, by the series of judgements it has handed down major efforts of the other organs of the State to remove caste inequalities in the form of affirmative action have suffered a major setback.

In Champakam Dorairajan's case it struck down a proportional distribution of medical seats to all castes and communities (State of Madras v Champakam Dorairajan AIR 1951 SC 226). This necessitated amendment of the Constitution itself to incorporate Art. 15(4) to enable reservation of seats in educational institutions in favour of Socially and Educationally Backward Classes. But in Balaji's case reservation was cut down to 50% and on that ground the court struck down the Mysore G.O. on reservation (Balaji M.R. V State of Mysore AIR 1963 SC 649). As a result of it the Backward Castes and Tribes were deprived of their legitimate share of educational opportunities and appointments for fifteen years. In Devadasan's case it was further cut down by restricting the carry forward rule to 3 years (Devadasan .T v Union of India AIR 1964 SC 179). In Chakradhar Paswan's case single posts were eliminated from the purview of reservation (Chakradhar Paswan v State of Bihar AIR 1988 SC 959). In Mandal case reversing an earlier ruling, which had stood the test of time, reservation in promotions was invalidated (Indra Sawhney v UOI AIR 1993 SC 477). This resulted in amendment of the Constitution again, by incorporating Article 16 (4A). Now in Sabarwala Case reservation it self is done away with if the quota is filled up (R.K. Sabharwala and others v State of Punjab and other (1995) 2 SCC 745). In some recent cases though Art. 16 (4A) provided for reservations in promotions the Court has denied the right to seniority for SC and ST employees getting promotion against reserved posts (Ajit Singh Januja v State of Punjab (1996) 2 SCC 715, Ajit Singh II v State of Punjab (1999) 7 SCC 209 and M.G. Badappanavar v State of Karnataka (2001) 2 SCC). In Priti Srivatsava case not only the reservation in super specialty courses was denied, even the concessions given to SCs and STs in admissions to PG Medical Courses was annulled as opposed to national interest and the interest of

community or society as a whole (Dr. Preeti Srivatsava v State of MP AIR 1999 SC 2894).

While the SCs and STs enjoy reservation and get representation in the Legislature and the Executive there is no such reservation and therefore representation to them is denied in the Judiciary. Absence of SCs and STs in adequate number itself has denied the Judiciary the benefit of their contribution about the ground realities on caste discrimination and related issues. The Parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes, noticed the gross under representation of the Scheduled Castes and Scheduled Tribes in the appointment of judges to the High Courts and Supreme Court. As per the data collected by it the position as on May 1, 1998 was that for a population of over 15% Scheduled Castes, there were only 15 High Court Judges, in a total strength of 481 High Court Judges while the Scheduled Tribes had only 5 and 52% belonging to the Backward Classes had only a token representation of 35. The position in the Supreme Court was still worse. No representation was given to these sections at all. Recording its strong disapproval against denial of representation to SCs and STs and accusing practice of untouchability and disobedience of the Constitution with regard to Articles 16(4) and 16(4A), the Committee strongly recommended for taking immediate steps to amend Articles 217 and 124 of the Constitution to give adequate representation to the Scheduled Castes and Scheduled Tribes in appointment of Judges to the High Court and Supreme Court as also in the appointment of officers and staff in their establishments (Kariya Munda, 2K : 14-15).

SHOULD U.N. DISCUSS CASTE

In the backdrop of the facts narrated above, it is seen that the State apparatus in India is laboring under extreme difficulties to end caste discriminations. Let alone making a dent, there is not even a beginning made in this matter. Even the most inhuman practice of untouchability, that has affected a population of 250 millions, resulting in human rights violation of the worst kind is still to be redressed, abolition of it under the Fundamental Rights chapter notwithstanding. World attention and U.N. intervention has helped to end Apartheid and similar practices in other Countries. In South Africa there was a bloodless and voluntary transformation brought about. The Indian State apparatus will gain in strength and morale if impartial United Nations agencies operate in these fields to end the barbaric caste discriminations and root-out the 5000 years old social evil lock, stock and barrel. Globalization has invited foreign goods, media, lawyers and other services and industries. Why hesitate to globalize caste violation of human rights. Let us agree for an international discussion at least before a U.N. forum.

There is also another reason why the matter requires United Nations attention. The caste discrimination is not a phenomenon confined to India alone. The caste discrimination and untouchability is also noticed in several other Countries like Japan, and Korea (against Burakumin), Nigeria (Osu) and other West African nations. Further wherever the Indians have migrated, they have carried with them their caste. Invariably they return to India to pick a bride or bridegroom belonging to their respective castes. In those foreign countries they have their caste associations. Even when they do not directly mention the name of the caste, whatever associations they form are confined to their respective castes. Therefore caste discriminations are bound to prevail in such situations. Such communities are found in West Indies, South Africa and several other African countries as also in United States, Canada and England. International focus and United Nations intervention to end caste discrimination would remedy the situation everywhere once and for all.

The expanded definition of Racial Discrimination includes caste discrimination also as it is a discrimination based on descent. Caste system is nothing but Apartheid in India. The Indian bureaucracy appears to be dead set to oppose inclusion of caste discrimination on the agenda of the World Conference against Racial Discrimination to be held at Durban, South Africa from August 31, 2001 to September 7, 2001. The highest policy making body of the country namely the Parliament of India has not discussed this issue much less has it decided to oppose the inclusion of this matter in the agenda. No decision appears to have been taken even by the Council of Ministers to oppose the inclusion of this matter in the agenda. In the circumstances it is obvious that it is the bureaucracy, which has been the major beneficiary of the caste inequalities in the country that is manipulating the entire situation to oppose the enlistment of caste discrimination on the agenda of the World Conference. If this opposition of the Indian bureaucracy is allowed to succeed, the Hindu society will lose a golden opportunity to wipe out this shame once and for all. "What is required is to purge it of the doctrine of *chaturvarna* (which is the) parent of the caste system and untouchability" as demanded by Ambedkar.

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