CHAPTER- II

Historical Prospective of the Indian Social Order

Caste is a value concept. There is always a correlation between Caste and Social position of a person. Unlike in the capitalist and socialist societies caste plays an important role in the Indian mixed society. Unlike in a casteless society caste plays a key role in a caste based society in determining the social, political and economic status of a person. Karl Marx dream of a classless and casteless society became a distant dream. In the Indian social system one can witness numerous religions, castes, races, communities, cultures and languages. In such a society importance of caste in the developmental process cannot be ignored. At the same time total reliance on caste to secure distributive or compensatory or restorative justice to low caste people through affirmative action programmes will generate a feeling of frustration among the higher castes. It is really a difficult task for the policy makers to synthesize the conflicting interests of the caste groups. Caste occupies a pivotal role in the arena of protective discrimination in the Indian context. Any discussion on the policy of reservations requires a brief study of the evolution of caste system and its impact on the Indian social order. As such an attempt is made in this chapter to trace briefly the origin and growth of the caste system and its bearing on the socio-economic conditions of the Indian society. Further, the rigour of untouchability
and the pre and post-constitutional attempts to abolish it are also discussed.

The Hindu social order is based on caste system. This social order divides the mankind into four varnas Brahmin, Kshatriya, Vysya and Shudra. According to this hierarchical caste system a man's/woman's position and values are determined by his/her birth in a particular caste and not by worth.

The Brahmin has a right to priesthood and knowledge, the Kshatriya to fight and Vysya to indulge in business and serve the upper two castes while the Shudras have none of these rights. They are expected to serve the upper three 'Varnas' so that they are born in the higher caste in the next birth through their karmas (actions). The doctrine of Karma, the central theme of Hindu philosophical system, was the source which upheld the privileged ranks. It answered the need of the caste Hindus to justify their existence and legitimized exploitation of the repressed Classes.¹ In addition to the Shudras, there are Ati Sudras,

Scheduled Castes or untouchables and Scheduled Tribes who are outside this fourfold classification of this caste system.

2.1. **Aryan Invasion;**

The Aryans came from outside India in search of new pastures and new green fields for their cattle. They were white race and nomadic tribes. They invaded India, conquered the natives of the country i.e., Dravidians and reduced them to the state of Qasyas Viz. slaves. They destroyed the old civilisation of this country which flourished in Indus Valley, Mohanjodaro and in course of time, they got mixed with the natives of the country. It is said that their social system was based on caste system as contained in purusha Sukta of Rig-Veda. This was the earliest known literature. It is simplistic approach and based on experience of implementation of the British racial policy of apartheid. This theory has to be deeply investigated to find out whether caste system was brought by the Aryans or it has developed or was already in existence in the ancient civilisation.

Dr. B.R. Ambedkar held that the entire theory of invasion of India by Aryans was based on the assumption that greater number of European Languages and some languages of Asia must be referred to an ancestral common speech which has come to be called Germanic and these
languages have collectively been called the Aryan Languages. Some authors further attack that Arya is not at all a race of any kind. Arya and Anarya do not exist in India as races according to Mayne. Professor Max Muller states that there is no Aryan race by blood. Aryan means language. Since the Vedas also refer to Aryans, they also belong to the same family as Indo-Germanic. From this, the theory of invasion has been inferred. From this assumption they have drawn other assumptions that Indo-Germanic people belong to the original Aryan race and have come from Europe.

2.2. **Jati and Varna;**

"Jativyavastha" is not the same as "Varna Vyavastha." Both are different. Jati Vyavastha, the caste system, when compared to the one given in Bhagvad Geeta, contradicts each other. While the Rig-Veda talks of Jati (endogamous), Geeta talks of 'Varna' which is occupational classification. While according to Rig-Veda there are three or four castes born from the person or Purusha. There are two Varnas according to the Geeta i.e., Vipra, the reciter of the Vedas and Brahmins. Bhagvad Geeta says that all are born as Shudras

who are equal whereas Rig-Veda says that all were born unequal. Thus the two Vedas and the Vedanta scripture do not agree with each other and lack of consistency in their application. That is why Dr. Ambedkar says that Purusha Sukta is a forgery and a latter addition to the Rig-Veda and there were only three castes but not four. He concluded that Shudras were Kshatriyas.

Quoting from Apasthmba, Ghurye says, "Between a hundred year old Kshatriya and a 10 year old Brahmin, the latter is said to be like the father". A small priestly class, by a subtle process of conditioning the thinking of the vast majority of the people, hypnotised them for ages into accepting a role of servility with humility. As labourers, cultivators, craftsmen, etc., shudras were the main producers of social surplus. Their social labour was the life blood of India's great civilisation. They were not even allowed to meditate as can be gathered from the story of shambuk.

1. Ibid., at P.15.
3. Valmiki's Ramayana tells the famous history of shambuk, a shudra, who hung himself by his feet from a tree in the forests of uttarkhand and went into deep meditation for 12 years. At the death of a Brahmin boy whose father was still living, some of his kinsfolk complained to Rama that this outrage had occurred because Shambuk had committed the sacrilegious act of meditation despite being a shudra. Rama went to uttarkhand forests and after verifying the truth of this allegation, beheaded shambuk for his temerity.
2.3. Untouchability during the British Period

In vedic times there was no untouchability. In support of this proposition one may rely on Dr. Kane's statement.¹

Dr. Kane says:-

"In the early vedic literature several of the names of castes that are spoken of in the smritis as Antyajas occur. But there is no indication in these passages whether they even if they formed castes, were at all untouchables ".²

The writings of Bana show that the chandalas of Bana's period had ruling families among them, and, therefore, the chandala girl who was described by Bana in the most eloquent and gorgeous language could enter the king's palace.³ The untouchable girl could certainly be not allowed to enter the King's Palace.⁴ For Bana speaks of the Chandala girl as a Chandala Princess. Bana wrote sometimes about 600 A. D. and by 600 A. D.

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3. Bana was a Vatsyayana Brahmin.
4. Kadambari - (Ridding's Translation), P.204.
the Chandalas had not come to be regarded as untouchables. The conditions of the Chandalas may only be regarded as the extreme form of impurity practised by the Brahmins who are always in the habit of indulging in overdoing their part in sacerdotalism.

Fah-Hien, a Chinese traveller who came to India in 400 A.D. left a very interesting account. His observations do not support the conclusion that there existed untouchability before 400 A.D.

The next Chinese traveller who came into India was Yuan Chwang. He came to India in 629 A.D. He stayed in India for 16 years and had left most accurate records of journeys up and down the country and of the manners and customs of the people. The writings of Yuan Chwang mentioned communities other than the Chandalas. It is, therefore, just possible that when Yuan Chwang came to India, untouchability had just emerged.

2. For details see Buddhists Records in Western India by Beal Introduction, P.XXXVIII.
3. For details see Waltere Yuan Chwang, Vol.1, P.147.
It may be stated that while untouchability did not exist in 400 A.D. it had emerged by 600 A.D. These are the two limits, upper and lower for determining the birth of untouchability. Can we fix an approximate date for the birth of untouchability? If we take beef-eating which is the root of untouchability, as the point to start from as a point to unconnoitre it follows that the date of the birth of untouchability must be intimately connected with the ban on cow killing and on eating beef.¹

If we can answer when cow killing became an offence and beef-eating became a sin, we can fix an approximate date for the birth of untouchability. When did cow-killing become an offence? We know that Manu did not prohibit the eating of beef nor did he make cow-killing an offence. As has been shown by Dr. D.R. Ambedkar, cow-killing was made a capital offence by the Gupta kings sometime in the 4th Century A.D. It can therefore, be stated that the practice of untouchability might have started sometime about 400 A.D. It might have been born out of the struggle for supremacy between Buddhism and Brahminism.

The root is strong and its length is deep. The strength and the length of the root are to be understood as conditioning factors of the minds of the Hindus. The term 'Depressed Classes'

1. Ibid., PP.128-159.
seems in the social and religious thinking of Hindus. The expressions 'suppressed', 'oppressed', 'repressed' and 'submerged' were used as substitutes for the word 'Depressed' by different people but the 'Depressed' continued to be acceptable to a majority and even to those people who preferred such other terms. Sir Mannubhai Mehta has suggested the term 'un-regenerate classes'. This term was opposed by others at the very time it was suggested because it sought to conceal the sufferings of the untouchables which was a direct result of their oppression by the caste Hindus. In opposition to this Commissioner Arther Blowes suggested the term 'unprivileged'.

'Untouchables' as a name generally applied to persons in the lowest classes of Hindu social order is relatively of recent origin. It first appeared in print in 1909.

1. The Hindi for the Depressed Classes 'Dalit' which was first used by Swami Shardhananada is more popular than the English expression.


The report of the Committee on untouchability has stated:

"Untouchability is a basis and unique feature of the Hindu Social System and Order. It has to be clearly realized that untouchability does not arise out of any personal fault or idiosyncracy on the part of any individual. It is an attitude on the part of a whole group of people. It is spirit of social aggression that underlines this attitude". 1

The root of reservation is also found in the census reports. The census reports for India published by the Census Commissioner at the interval of every 10 years from 1870 onwards contained a wealth of information nowhere else to be found regarding the social and religious life of the people of India. Before the census of 1910 the Census Commissioner had provided a column called "Population by Religion". Under this heading the population was shown:

1. Muslims.
2. Hindus.
3. Christians etc.

The census reports for the year 1910 marked a new departure from the prevailing practice. For the first time it divided the Hindus under three

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separate categories:

i) Hindus;

ii) Animists and Tribal;

iii) The depressed classes or untouchables.¹

All sorts of virtues and evils have been attributed to caste system by the social historians. One important outcome of this ritual ranking of castes has been to create deep-rooted vested interests in this caste system and to enable the higher castes to exploit the lower ones through the institutional frame of social organisation. The above scheme of social organisation transfixed for over 3,000 years, had far-reaching effects on the growth and development of various castes and communities. All Hindu dharma shastras take caste for granted. All Puranas assume the existence of caste and look upon it as permanent order of society.²

In Maratha Kingdom a Mahar—one of the untouchables—might not spit on the road lest a pure-caste Hindu

1. Use of this term in print can be traced with fair pre-cison in the year 1909. The census reports 1910 is the first official document in which we find the term in print. The adjectual form. ‘Untouchable¹ is used by Shridhar vs. Ketkar (1909:86) in a footnote to his study of the caste system. The Maharaja of Baroda in his remarks to the repressed Classes Mission of Bombay on 18th October, 1909, used the term and provided an explanation to his audience. (Sayaji Rao 1928: 244-245). The Maharaja of Baroda was a patron of Mr. Ketkar.

should be polluted by touching it with his foot, but has to carry an earthen pot, hung from his neck, in which to spit. Further he had to drag a thorny branch with him to wipe out his foot-prints and to lie at a distance prostrate on the ground if a brahmin passed by, so that his foul shadow might not defile the holy brahmin. The Maha Bharata said that the shudra can have no absolute property, because his wealth can be appropriated by his master. A brahmin was entitled to whatever existed in the world. In fact, the whole world was his property and others lived, on his charity.¹

Untouchability is a product of Hindu Caste System but racial segregation in U.S.A. or South Africa is virtually a form of untouchability. Shortly after the incorporation of the Bill of Rights, the need for legislation was however, felt to meet the problem of class discrimination against the blacks by private persons. The Civil Rights Act, 1875 was therefore

enacted by Congress to safeguard certain Civil Rights of the African, American, against private action.

This Act provided that "all" persons (regardless of race or colour) were entitled to full and equal enjoyment of the accommodations advantages, facilities and privilages of inns, public conveyance on land, water, theaters and other places of public amusement.

This early attempt to prohibit class discrimination in public places proved, however, abortive in as much as the Supreme Court held the Act to be unconstitutional, not being supported by any provision of the constitution, the 14th Amendment being directed exclusively against the State action. In the opinion of the majority, Congress could not penalise private persons for discriminating against the blacks.

From 1883 to 1895, American Constitutional history on this point presents a dark age. The failure of the Civil Rights Act, 1875 made it possible for the States to enact laws providing for the Segregation of Blacks from Schools, hospitals, public carrier and all other public places. The U.S Supreme Court’s decision in Plessy case¹ upholding 'separate but equal treatment' of the coloured races,

fortified unjustifiable racial discrimination in public places both by private persons as well as by the States.

Much is made of the problem of casteism and untouch-ability in India in foreign lands but this much is obvious that in India neither of these evils is supported by any legislation; in India the State is fighting against private individuals to bolt out these shameful maladies and the Constitution Strengthens the hands of the state in this behalf. It should be of interest to the World that untouchability has been made an ‘offence’ by our independent parliament, at an earliest opportunity by enacting the untouchability (offences) Act, 1955.

What happened in U.S.A. is just the contrary. But this tide was turned by the assumption of the leadership of the Supreme Court by Chief Justice Warren. Encouraged by the change in the trend of Supreme Court decisions on the question of racial discrimination, Congress enacted the Civil Rights Act again in 1957. The ambit of this Act is very wide.

Indian society has been caste-based with privileges to a few advanced castes and denial of human rights to the down-trodden. The representation of these communities in the organs of the state has been most nominal.
The untouchables comprised a member of distinct groups which form the lowest strata of Hindu Society, and were condemned as untouchables by the caste Hindus through centuries untold. Before the abolition of untouchability by the Indian constitution in 1950, untouchable classes were treated as three categories—"Untouchables, Unapproachable and Unseeables". They numbered about 20% of the total Hindus in India. In short, every fifth Hindu, man, woman, and child was an untouchable.¹

2.4. Custom and Untouchability:

The untouchables had different names in different parts of the country. They were called outcasts, untouchables, pariahs, Panchamas, Atishudras, Avarnas, Antyajas and Namashudras. Their touch, and even their voice was considered by the caste Hindus to be polluting. So they had to clear the way at the approach of the caste Hindu. They were forbidden to keep certain domestic animals, to use certain metals for ornaments; were obliged to wear a particular type of dress, to eat a particular type of food, to use a particular type of footwear and were forced to occupy the dirty, dingy and unhygienic outskirts of villages and towns for habitation where they lived in dark

insanitary and miserable smoky cottages are shanties.¹

Tyranny practised by the Hindus upon the Balais, an untouchable community in Central India, imposed the following rules in case the untouchables wanted to stay in their respective villages about fifteen in number.

(1) Untouchables must not wear gold-lace-bordered pugrees.
(2) They must not wear dhothies with coloured or fancy borders.
(3) Untouchable woman must not wear gold or silver ornaments.²

If untouchables refused to comply with this practise, they were persecuted by the caste Hindus, and were not even allowed to get water from the village wells.³

These untouchable Hindus were denied the use of public wells, and were condemned to drink any filthy water they could find. Their children were not admitted to schools attended by the caste Hindu Children. Though they

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1. Ibid., P.I.
2. Borale P. T., Segregation and Dasegregation in Iridia (First Published, 1968), PP. 2-3.
worshipped the Gods of Hindus, observed the same festivals, the Hindu temples were closed to them. Barbers and washermen refused to render them service. These untouchable Hindus were treated by the caste Hindus as sub-humans, less than men, worse than beasts.

1.5. **Caste and Untouchability:**

Untouchability is an unique feature of the Hindu Social System and order. Historical account of the Hindu Society reveals that the practice of untouchability is one form or the other is being observed in the Hindu Society, since time immemorial. The question as to its origin is a disputable one. But it is a fact that the untouchability in one form or the other is being practised in Hindu Society and with the time, this disease has spread over in other societies like the Sikh, Jain, and the Buddhist to some extent.

Since the last two centuries a trend 'from slavery to freedom' is spread over throughout the world and a voice is raised against the inhuman treatment of the human beings. The Hindus also realised that the untouchability is a stigma on the Hindu Society and it is an evil which is required to be eradicated from the society. The political leaders and social reformers came forward and raised a voice against the inhuman treatment given to a class of people regarded as untouchables historically. Untouchability is segregation gone mad. Theoretically, a device against contamination, it actually contaminates the country that allows it. Many Hindu reformers had attacked untouchability.¹ Mahatma Jyotiba Phule, Mahatma Gandhi, E.V. Ramaswami Naikar,
Dr. Babasaheb Ambedkar, Dr. Punjabrao Dashmukh and some other social reformers took keen interest in eradicating the practice of untouchability. The Government machineries were moved to take legislative measures for the eradication of the untouchability during the pre-independent era and agitations were launched, for e.g. Mahad Satyagraha, Kalaram Temple Satyagraha, Mukhed Satyagraha etc.

1.6. **Ambedkar views on Untouchability**

In all these agitations, Dr. Ambedkar played the major role. He was stung by inequality-human, social and economic. That made him bitter and impatient. He wanted that the depressed should rise and get better opportunities for their socio-economic uplift. He wanted to see them at par with other citizens of this country. Even he wanted better sense to prevail upon those who were responsible for their backwardness.

Dr. Ambedkar was from a Mohar family. He felt the pangs of untouchability from the very childhood. The shadow of untouchability did not leave him even after his return from his studies abroad. In Baroda, no hotel was prepared to provide accommodation

to him because he was an untouchable. Dr. Ambedkar himself was a victim of casteism, he accepted the challenge and took a vow to fight against the age-old oppression: It is a unique event of history that he was successful in creating a great organisation to spearhead the movement of liberation and emancipation of a people who knew not how to write, how to read, how to live, and how to speak.\(^1\) Any history of India will be incomplete without a proper place being given to Dr. Ambedkar in it and his herculean efforts in diverse directions in the case of Scheduled Castes.\(^2\) He had bitter experiences even when he became a lecturer in a Gujarat College. As an example of blind priestly prejudice against low castes, Prof. Madhu Dandavate cited the incident when lord Mountbatten had invited Dr. B.R. Ambedkar, a member of his Executive Council to accompany him to a visit to Jagan-nathpuri temple. Whereas the local priests happily welcomed Mountbatten to enter the temple, they refused permission to Dr. Ambedkar. Ambedkar knew the bitter truth that he could not obtain his rightful place in the society, so long as he was untouchable. He studied the social and cultural history of the country in depth and came to the conclusion that untouchability was an off shoot of Chaturvarna of the Hindu religion.

Dr. B.R. Ambedkar advanced the theory that the untouchables were broken men. He raised several questions in search of his theory. He has asked why the Brahmins refused to officiate at the religious ceremonies of the Broken Men? Why did the Brahmin regard Broken Men as impure? Why did the broken Men regard the Brahmins as impure? What is the basis of this antipathy? He has answered these questions.

"This antipathy can be explained on one hypothesis. It is that the Broken Men were Buddhists. As such they did not like the Brahmins, did not employ them as their priests and regarded them as impure. The Brahmin on the other hand disliked the Broken Men because they were Buddhists and preached against them contempt and hatred with the result that the Broken Men came to be regarded as Untouchables". The proper appreciation of the historical account of the origin of untouchability is necessary in order to understand the outlook of hatred and contempt that resulted into the most inhuman treatment meted out by the caste Hindus to the untouchables.

1.7. **Untouchability and the Parliament;**

The Parliament is empowered to make laws prescribing punishment for practising untouchability under Article 35 of the Constitution. By virtue of the power conferred by Article 35 (a) (11), the "untouchability" (offence) Bill 1954 (No.14 of 1954) which took the final shape as the "untouchability" (offences) Act, 1955 was introduced in the Lok Sabha on 15th March, 1955 and was published in the Gazette of India on 8th May, 1955. Till this time, no central legislation is in existence on this subject. The State enactments then in force were repealed by the untouchability (offences) Act, 1955 to the extent to which they or any of the provisions contained therein correspond or are repugnant to the untouchability (offences) Act or to any of the provisions contained therein. examine the problem of untouchability as also the problem of economic upliftment and educational development of the Scheduled Castes. The said Committee submitted its report to the Government in the year 1969. On the suggestions of the said

In the year 1965, the Government of India, Department of Social Welfare constituted a Committee headed by Shri L. Elayaperumal to

Committee, the "untouchability" (offences) Act, 1955 has been amended by the "untouchability" (offences) Amendment and Miscellaneous Provisions Act, 1976.

Some significant changes have been introduced by the said Amendment Act. The title of the "Untouchability" (offences) Act has been replaced by "The Protection of Civil Rights Act. The minimum punishment is prescribed. The offences under the Act have been made cognizable and non-compoundable. New provisions have been introduced to make the implementation of the Act more effective. The Constitution also directs the states to undertake special measures for the upliftment and advancement of untouchables by enacting suitable legislations from time to time and by providing such facilities as are necessary for their advancement. Under the Directive Principles, Article 46 clearly lays down that, the State shall promote with special care the educational and economic interests of the Weaker Sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes and shall protect them from Social injustice and all forms of exploitation".

The constitution has also made special provisions relating to Scheduled Castes and Scheduled Tribes in Part XVII (From Articles 330 to 342) for the reservation of seats in Parliament and State Legislatures so that there could be an adequate representation of such class of people in the different representative bodies both at the Centre and the States.
Summary;

The Indian social organisation has been based on caste system. This social organisation has divided the Hindus into four varnas, Brahmin, Kshatriya, Vysya and Shudra.

In this chapter various aspects of caste evolution were discussed under the various sub-headings.

Aryans invaded India, conquered the natives of the country, and reduced them to the state of slaves. The caste system is contained in Rig-Veda but other version is that the original religion is not vedic religion but it is shaivism. In this context, Rig-Veda talks of Jati, Geeta talks of varna. Geeta says that all are born as shudras who are equals, whereas Rig-veda says that all are born as unequal. Hence even Geeta and Rig-veda do not have the agreement regarding caste system. Indian society transfixed for over 3000 years had far reaching effects on the growth and development of various castes and communities. According to Dr. Ambedkar, untouchability was started sometime about 400 A. D. It is born out of the struggle for supremacy between Buddhism and Brahminism. Untouchability is a product of Hindu Social-Order but racial discrimination in USA or South Africa is virtually a form of untouchability.
1.8. **LEGISLATIVE EFFORTS TO REMOVE CASTE DISABILITIES;**

When the Indian social system was dominated by caste considerations, the British rulers came to India, not to reform the Indian social system, but to strengthen their trading activities. It is not correct to say that the British rule did not make any dent on the Indian social order perpetuated by varna-system. When compared to the native feudal factions during the British rule old powers and prerogatives were abolished; occupations and learning were rendered obsolete or marginal; new opportunities for gain and advancement were introduced, power and access to it were redistributed. In this Part an attempt is made to review the steps taken during British period for the protection of low castes and also attempts to remove caste disabilities.

2.8.1. **Protection of Low Castes;**

Even during the British period the domination of upper castes over lower castes continued. But the legal system devised by the Britishers to some extent diluted the rigour of casteism in the general social relations. For example, the general features of the legal system were not articulated to a system of graded inequality. Legal enforcement of slavery was withdrawn. The principle of equality found expression in the abolition of slavery, in the opening of new schools and colleges open to all (in theory, at least) irrespective of religion, race and caste. Similarly, new economic opportunities were also thrown open to
all, though caste and other groups who traditionally lived in big towns and coastal areas enjoyed a considerable advantage over the others. The use of caste in the general civil law was sharply restricted and soon abandoned. The British law did not recognize the autonomy of castes as groups. But, after an initial flirtation, the British were reluctant to provide affirmative support for their internal powers of governance. Affirmative support was confined to a narrower ambit than in the past, when Hindu rulers gave redress for grievances which the Anglo-Indian courts excluded as involving only social privileges. Yet the British Courts were more ubiquitous and accessible, more efficient and relentless in operation; even their attenuated and indirect support had great impact. However, the prevalent poverty and illiteracy among the lower castes kept them away from the protection and remedies accorded by the laws. Commenting on the then existing police and legal system, Conn observed that the lower castes have generally been unsuccessful when, through the use of police or of the urban courts, they have sought to redress what they believe to be the corporate wrongs done to them by upper castes. The upper castes maintain their economic position, their knowledge of the courts and the intricacies of the law and better

1. Legal enforcement of slavery was outlawed by the Indian Slavery Act (Act V of 1843), Possession of slavery was made a criminal offence by the Indian Penal Code (Act XLV of 1860) on the way that agrestic slavery in Southern India Compounded the disabilities of the lowest castes. See Adam 1840:
access to officials have thwarted attempts to change the position of the lower castes in the village society and economy.

The British were less willing than earlier-rulers to lend the civil power to uphold prerogatives claimed in intergroup relations. The assertion of precedence and the imposition of disabilities received limited and for most part indirect support from the law.

If in practice, legal institutions often adapted themselves to the prevailing patterns of disability, the lowest castes did enjoy a new equality in the eyes of the law and had access to it, at least formally.

The law opened some possibilities for advancement and change to the lower castes, as it did in the case of others. But it did not provide any, special leverage for the lowly to use these opportunities, hence use of them tended to correspond to the existing distribution of resources. Just as, for example, new opportunities for advancement through education and government service were grabbed largely by Brahmins and other high castes with a literate tradition, so those who were already supplied with

other advantages tended to make use of the new opportunities afforded by the legal system. The law did not provide the higher castes with an instrument for aggressively suppressing their inferiors but the law provided another resource which higher castes could use to protect their claims to precedence, and in some instances, perhaps, even tighten their hold on valued resources to the exclusion of lower castes.

Most of the new opportunities in education and government services were grabbed by those already supplied with advantages, but some members of the lower castes did find new opportunities as menial government servants, in army service, and in trade and contracting (sometimes protected by their monopoly in a degraded occupation like leather work or sweeping).

The problems faced by the lowest castes in utilizing these new opportunities are exemplified in their struggle to obtain schooling. In 1856 a Mahar boy, who was refused admission to a government school, appealed to the Bombay Education Department but was refused on the ground that it would not be right for the sake of a single individual. The only Mahar who had even yet come forward to beg for admission into a school attended only by pupils of caste, to force him into association with them, at the probable risk of making the institution practically useless to the great mass of natives.
In 1858 the Bombay Government announced that it reserved the "full right of refusing ... support ... to any . . . school in which the benefits of education are withheld from any class of persons an account of caste or race", and further resolved that all schools maintained at the sole cost of government shall be open to all classes of its subjects without distinction.¹ Nevertheless, as reported the Department of public instruction, the opposition of the higher castes to the admission of untouchable boys to a public school was often so strong that even with the best will in the world the department could do very little in the matter.

A few special schools were opened by reformers, by missionaries and by the government. In regular schools, the few "Untouchable" children were subject to invidious segregation—being forced to sit away from others on the verandah. Some concessions in the primary school fees special scholarships in secondary school and colleges were made available in the late 19th Century.

¹. Ibid., P.189.
1.8.2. **Reconstruction of Hindu Society:**

The growth of a class of Indians educated on western lines, the spread of British Political and social ideas and the incessant criticism of missionaries all contributed to an intellectual ferment which questioned many aspects of Indian life. Practices which appeared natural and inevitable now seemed problematic. Religious reformers responded to the humanist and rationalist critique of Indian institutions with programmes to reconstruct and purify Hindu Society. Groups of educated Hindus devoted themselves to refashioning social institutions with new notions of humaneness, justice and equality.

The currents of reform stirred others than emancipated intellectuals. The changes under British power gave scope to the impulse to self-improvement and advancement in many groups. In the late 19th Century, many castes organised, held conferences, published newspapers, and undertook interval reform efforts. At first, they tended to seek advancement in traditional terms of ritual status, vying for prestigious entries on the census, putting forth claims to exalted varna position, and upgrading their practices in terms of received notions of respectability. The interest of caste organizations turned increasingly to secular betterment. They founded hospitals, hostels, and loan funds; they sought representation, government jobs, and scholarships.
New forms of organization were taken up by some castes at the lower end of the spectrum. Some embraced the opportunities afforded by missionaries; others were influenced by Hindu reform movements; still others developed their own organizations. The first militant action by low castes was the campaign of the shanars (later Nadars) to enter temples in the Tirunelvelly District in Madras, a demand connected to their claim to be Kshatriyas. The Ezhuvas (Iravas) of Kerala took a different path by the early years of the 20th century, poona reformer, Jyotirao Phule, who united a programme of education. They had developed their own system of temples and schools, the first efforts to assist the low castes had come at mid-century under the auspices of self-help with a thorough going attack on castes, from missionaries who preferred conversion as a solution and from Hindu religions reformers like Dayananda Saraswati, founder of the Arya Samaj, who preached a purified varna and attacked caste exclusiveness.

Although anti-caste associations had earlier voiced opposition to caste distinctions, it was not until the end of the Century that mainstream reformers saw caste hierarchy and inequality as problems in their own right. In the next dozen years, missions, schools, and scholarships for depressed classes were founded. Not only did amelioration of the lowest castes become one of the most prominent items of

reform, but it was accompanied by a shift in attitude toward the caste system.

1.8.3. **National Congress and the Oppressed Classes:**

The notion of reforms proceeding from and directed to a single national community transcending divisions of religion, caste, and sect was not self-evident in the late 19th Century. Reform of social practice was considered appropriate for each constituent group within the society. Thus, in his presidential address to the second meeting of the Indian National Congress in 1886, Dadabhai Naoroji explained his objections to making social reform part of the congress programme.

How can thus gathering of all classes discuss the social reforms needed in each individual class? What do any of us know of the internal home life, of the customs, traditions, feelings, prejudices of any class but our own? How could a cosmopolitan gathering like this, discuss to any purpose the reform needed in any one class? Only the members of that class can effectively deal with the reforms therein needed, A National Congress must confine itself to questions in which the entire nation has a direct participation, and it must leave the adjustment of social reforms and other class questions to class congresses.

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At this point, the condition of the untouchables—as they were coming to be called\(^1\)—which had become a major item of reform interest, was propelled from the realm of philanthropy and social uplift into the political arena. Growing concern about the untouchables was augmented by the first appreciation of their political significance, concern about Hindu members was accentuated when the census commissioner (for 1911) bruited the suggestion that the untouchables (then known as repressed Classes) should be enumerated as a group separate from the Hindus, a suggestion promptly endorsed by the Muslim

\(^1\) In 1909 the problem of the lowest castes was for the first time conceptualized under the rubric of "un-touchability"—a general term which opened the possibility of visualizing the problem not as that of a congeries of depressed groups, but as a stratum of all India dimension with shared characteristics. Use of the English term "Untouchable" in print can be traced with fair precision to the year 1909. The Maharaja of Baroda in his remarks to the Depressed Classes Mission of Bombay on October 18, 1909, uses the term and provides an explanation to his audience (Sayaji Rao 1928: 244-45). The abstract form "Un-touchability" is used by Sridhar V. Ketkar (1909:86) in a footnote to his study of the caste system; The preface of the volume is dated September 1909, The Maharaja of Baroda was the patron of Mr. Ketkar and supported him during the years at Cornell University when he wrote this book. (see Ketkar 1911:XXVI) Weit-brecht-Stanton (1920: 173) attributes the term's prominence to the Gaikwad (Maharaja).
League.¹ Suddenly there was quickened interest in the depressed classes from previously indifferent Hindu leaders who were now insistent that depressed classes were within the fold of Hindu.² Apprehensions about a continued Hindu majority must have been seen in the light of these current estimates that the Depressed Classes membered 50 to 60 million - from a sixth to a fifth of the total population and roughly the magnitude of the plurality of Hindus in the population.³

1."Since the publication of the recent Reform Measures (the Minto – Morley Reforms of 1909) the Mohamedans have been loved in declaring that, properly speaking/ the out castes are beyond the pale of Hinduism, and therefore their strength should not go to swell the numerical foce of the Hindus..." Saint Nibal Singh in Indian Review, September (1910), reprinted in Anonymous, (1913): 89.

2. A contemporary observer reports that "a question that is agitating Hinduism at the present moment is as to whether these (Untouchable) classes should be counted as Hindus or not. Ten years ago the answer would have been emphatically in the negative. Even now the conservative feeling of the country is for their exclusion. But the conscience of the more advanced section of the educated Hindus is a little more sensitive on this point "(Holderness 1911 i 101 - 2). Cf. Tinker 1962: 131, who reports that "as late as 1910, upper caste politicians were demanding that (Untouchable) should be excluded from the Hindu fold in the census."

3. The Hindu percentage of the population had been falling slowly but steadily for decades.
"Untouchability" was thus propelled into a prominent (but not central)place on the Indian political stage, which it was to occupy until after Independence. This new position was soon reflected by the reversal of the Indian National Congress's long-standing policy of excluding "social reform" from its programme. At its 1917 annual meeting, the congress for the first time passed a mild and hesitant anti-disabilities resolution. As Congress had avoided social reform because of its divisive potential, it now embraced it (in part) because of its unifying potential. From this point on, the social question was indissolubly linked to the political movements of the middle castes against the cultural predominance of Brahmins had emerged in the 19th Century; now, focussing on Brahmin predominance in education and government service, they took political form. The non-Brahmin movement was founded in Madras in 1916; the organization of Non-Brahmin party in Bombay got under way in 1917.

1. The Anti-.Disabilities Resolution outlines the policy of the National Congress. The resolution reads as follows: "The Congress urges upon the people of India the necessity, Justice and righteousness of removing all disabilities imposed by custom upon the depressed classes, the disabilities being of a most vexations and oppressive, subjecting those classes to considerable hardship and inconvenience" (Quoted in 3. Natarajan 1969:144). The Congress resolution omitted a crucial of the original, as submitted by the Depressed Classes Mission Society, which specified "disabilities imposed by religion and custom" Emphasis added.
The princely state of Mysore instituted a system in which all communities other than Brahmins were denominated "Backward Classes" from 1918. Places were reserved for them in colleges and State services and thus was inaugurated the first modern regime of communal quotas. Non-Brahmin demands for a greater share of political representation were quickly recognised by the British.

As untouchables increased their political activity and as concern for their welfare became a plank of Congress policy, Legislatures for the first time took interest in their problems. There was a scatter of undertaking by Government to provide land, housing, schooling and government posts to the Depressed Classes. The illegality of denying access to schools, wells, and roads was declared in legislative resolutions and administrative orders-which were honoured largely in the breach.¹ Special Government

1. For example the Bombay Legislative Council adopted a resolution in the year 1923 providing free access to untouchables to watering places, wells, schools, dispensaries etc. and the Collectors were entrusted with the task of giving effect to the resolution. After seven years the State Committee felt that the policy was a "complete failure" when it could not find a single instance where Depressed Classes are continuously using the same public wells as the higher classes,
officers were appointed to look after their welfare. There were fee concessions and scholarships and some pressure on schools to be accessible. School enrolments increased, and a few untouchable, entered public services.

The Elayaperumal Committee report says that in the year 1925 a Bill was introduced in the Madras legislative council to put under statute the principle of a resolution passed in the previous session of the council throwing open all public roads, streets and pathways giving to any public offices, well, tank or place of public resort to all classes of people irrespective of their cast creed".

1.8.4. M.K. Gandhi's Attack on Untouchability;

In 1916 M.K. Gandhi returned to India from South Africa and assumed leadership of the Indian National Congre his autobiography, Gandhi tells us that from the age of twelve he was convinced that untouchability


could not be sanctioned by Hinduism. From his first public statements on the subject, he describes untouchability as a sinful excrescence upon Hinduism. While rejecting caste in its modern manifestations, Gandhiji accepted varnashrama dharma as a healthy division of labour by birth.

If Gandhi personified the evangelical approach, the secular approach was personified by the most gifted and wide-ranging spokesmen to appear among the untouchables, Dr. Bhimrao Ramji Ambedkar. Dr. Ambedkar was younger and less experienced than Gandhi when he stepped into the political stage in the early 1920s.

2.8.5. Simon Commission Report

The major round of bargaining over the future of India began in 1928. For the first time, the untouchables were fullfledged participants. The negotiations began with the visit of the Simon Commission, which was empowered to make recommendations for a new round of constitutional reforms. Dr. Ambedkar, by this time

1. Ambedkar Dr., throughout his career, received the most intense and unswerving support from his own Mahar Community. Notwithstanding his subsequent veneration, his command of the allegiance of other groups of untouchables varied considerably, and there were intermittent attacks on his represent them. On other untouchable leader and movements, Zelliot (1969) : 183-85, 193-94, 206-7, Patankar and Omvedt (1979) : 415.
recognized as an important spokesman, appeared before the commission to demand reserved seats for the untouchables in legislative bodies, special educational concessions, and recruitment to government posts, recommendations substantially accepted in the commission's report.¹

When this report proved unacceptable to the major contenders, the British Government convened a round table conference in London, to which it invited delegates from all parties and prominent interest groups. In the course of the conference, Dr. Ambedkar abandoned his earlier opposition to separate electorates.² His demands for safeguards in a future constitution now included separate electorates as well as recruitment to government services, laws against discrimination, and a special department to look after the depressed Classes.

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2. Ambedkar's opposition to separate communal electorates was shaken by the stubborn attachment of other communities to this device, which was also favoured by most untouchable activists. His sense of obligation to represent his constituency compounded his fears that the claims of the repressed Classes would be submerged without their own representatives (Zelliot 1969) : 116-17) Patankar and Omvedt (1979) : 419.
When the conference committee's Franchise committee was unable to reach agreement on representation for minorities, the delegates authorized Prime Minister Ramsay Mac Ebnald to make an award which would be binding on all parties. The communal Award, announced on August 11, 1932 gave the untouchables regular votes in the general electorate and granted their demand for separate electorates in areas where they were concentrated in addition to the regular votes they would cast as members of the general electorate.

Gandhi, who was imprisoned as a result of his civil disobedience campaign, now undertook to carry out vow by fasting until death unless the separate electorates for untouchables were revoked. His objection was that separate electorates would signify a perpetual split in Hinduism, perpetuating the stigma of untouchability and making impossible the assimilation of the untouchables into the Hindu Community. It is evident that Congress opposition, if not Gandhi's personally, was inspired by fear that the great Hindu base of congress support would be weakened and that candidates returned from separate electorates would be advocates for group interests with little concern for the congress programme. Finally, many congressmen, including Gandhi, did not have a very high regard for the political capacities of untouchables.
2.8.6. **Poona Pact;**

The British Government declined to alter the Communal award without the consent of the affected groups i.e., without the consent of Ambedkar as the representative of the depressed classes. Curing the twenty-one days of Gandhi's fast, Ambedkar was subjected to immense pressures, not least the sense of the cataclysm that might engulf the untouchables, if Gandhi were to die. Wresting as much as he could from the Congress leaders, who negotiated with him, Ambedkar relinquished the separate electorates in return for a system of reserved seats to be elected from "Joint" or general electorates. The final agreement reached on September 28, 1932, known as the Poona (or Yeravada) Pact, set the subsequent pattern of representation for untouchables. The Poona Pact provided 148 seats for untouchables, instead of the 78 separately elected

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1. After meeting Ambedkar for the first time in 1931, Gandhi told his secretary, "I did not know that he was a Harijan. I thought he was some Brahmin who took deep interest in Harijans and therefore talked intemperately" (Quoted by Zelliot 1969): 178, Since Ambedkar had been a prominent spokesman for several years, this suggested inattention to untouchable movements as well as an assumption that untouchables were incapable of providing their own leadership. Cf. Patankar and Omvedt (1979): 419.

members given by the communal award. It also provided a system of primary elections for those reserved seats; a panel of four candidates was to be chosen by electors from the depressed classes.

In the light of the agreement, it was clear just what was really at stake. Gandhi argued for Joint electorates so that caste Hindus would be forced to seek votes from untouchables.

Whatever the motives of Gandhiji’s fast, the political effect was to dramatize the issue of untouchability while preventing arrangements that would foster an independent political movement, sufficiently strong to believe in the Congress claim that it represents all of India. Ironically, this fast is often referred to as Gandhi’s fast against untouchability.

In a setting of Hindu-Muslim divergence, this sequence of events - the communal award, the fast, and the Poona Pact raised concern with
untouchability to new heights.$^{1}$ It was recognized as a problem that demanded a solution as part of the questions of Indian nationhood. The untouchability was not unconnected with concern about political alignments. As one congress sympathizer put it:

"With the Harijans within the Hindu Political group, the future of the Hindus is safe. Without the Harijans, the destiny of the Hindus will remain uncertain .... We do want to have the Harijans on our side in the political struggle, and even if it were for this purpose alone, the caste-Hindus must raise this curse of untouchability and bridge the gulf that divides them from their co-religionists. There is a real crisis in the political

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1. A conference of Hindu leaders, convened in Bombay on September 25, 1932, to ratify the poona pact, unanimously adopted the following resolution: "This conference resolves henceforth, amongst Hindus no one shall be regarded as an untouchable by reason of his birth, and that those who have been so regarded hitherto will have the same right as other Hindus in regard to the use of public wells, public schools, public roads and all other public institutions. This right shall have statutory recognition at the first opportunity and shall be one of the earliest Acts of the Swaraj Parliament, if it has not received such recognition before that time. It is further agreed that it shall be the duty of all Hindu leaders to secure, by every legitimate and peaceful means, an early removal of all social disabilities now imposed by custom upon the so called untouchable classes, including the bar in respect of admission to temples" (Quoted Rajagopalachari 1933:1).
life of the Hindu community.¹

2.8.7. **Attempts to Remove Social Inabilities:**

Efforts to remove untouchability and help its victims proliferated in the wake of the Poona pact. But only after Gandhi’s fast congress leaders were willing to countenance the affirmative use of the law to abolish disabilities² and in particular to obtain by law the admission of untouchables to Hindu temples, thereby symbolizing their inclusion within the Hindu community.

While temple entry absorbed advanced Hindu opinion, Dr. Ambedkar turned away from it to emphasize economic and educational advancement. The theory of ‘Karma’ and ‘Phala’ institutionalised the norms governing occupations and duties. They were rigidly enforced, particularly in the case of low caste. An untouchable could not change his occupation within a rural setting. All this was explained by

1. Agarwal (1934) : 22.

2. The National Congress at Karachi advocated for fundamental for future Republic of India which inter alia included rights against social disabilities. The Karachi resolution provided "(vi) no disability to attach to any citizen by reason of his or her... caste... in regard to public employment, office of power of honours, and in the exercise of any trade or calling."(vii) equal rights of all citizens in regard to public roads, wells, schools, and other places of public resort" (All-India Congress Committee A. D. P.66).
the Hindu scared law texts. This law was traditionalized and operated in the minutest details of daily life. The inequalities, ideas of pollution and untouchability prevalent in every aspect of human life were institutionalised and were so entrenched in the ideas, attitudes, values and culture of the different classes of people, that six hundred years of Mughal rule and three centuries of British rule did not make a dent. It is evident that during the Mughal rule in India, except the criminal law in respect of all other matters. Hindus decided their disputes by arbitration and panchayats among themselves. It can be assumed that Muslim rule did not stop the growth of these inequalities and disabilities imposed on untouchables.

British rule in India, is however, said to have given the varna system of Hindu society and the related untouchability practices, a definite shape.

The law reform measures started during the British rule, emanating from the ideas of equality in law and emphasis on humanistic

1. Sarkar U. C., "Hindu Law, Its character and evolution" (1964)

JILI (Vol.6), P.232.
values, brought the untouchability and the untouchables into sharper focus.

During the British period the introduction of Western education, new system of bureaucracy and cultural values such as egalitarianism and rationality, effected the traditional culture, structure and attitude of the people. These changes brought forth reform movements which forced the British Indian Government to ameliorate the conditions of the people belonging to low castes. The British Rule, brought along with legislation, many new ideas, values, and notions of justice. These were in conflict with the traditional Hindu Social norms. They introduced changes in the fields more dear to them. Legislation was the tool, they applied to bring about these changes. In addition to the use of legislation in various fields, they tried to change the customs and rituals of the traditional society and thus the attitudes and mores of the people, through this instrument. In the untouchability field, which was in sharp conflict with the notions of equality and new values of justice, the British did not put much legislative effort to curb the evil social practices, and in fact, evidence goes to show that untouchability practices got fully established during the British Rule. Marc Galanter has pointed out that, "During the British rule in India, the practices which came to be called 'Untouchability received limited and for the most part indirect support from law."
2.8.8. **Untouchables and their Temple entry:**

Untouchables who were regarded as outcastes were denied entry into Hindu temples. There was an outcry against this discrimination on the basis of caste. The national leaders in their speeches and writings strongly favoured the throwing of Hindu temples for all classes, irrespective of caste disabilities. These attempts had a decisive impact on provincial legislatures. As a consequence, the provincial legislatures began to pass laws providing unrestricted access to Hindu temples for all castes irrespective of their position and social status.

Madras State in the year 1938 passed the 'Malabar Temple Entry act (XX of 1938), which provided, the opening of temples in the Malabar district, by a majority vote of the caste Hindus of the locality. The temple entry authorisation and Indemnity Act (XXII of 1939) authorised Trustees to open temples to excluded classes, if in their opinion "the worshippers are generally not opposed. On similar lines, Bombay legislature also passed an Act namely Bombay Hindu Temple worship (Removal of disabilities) Act (XI of 1938). Surveying the progress in 1945, a reformer noted that as a result of the Madras enactments "Several small temples in the province were thrown open to the Harijans. But most of the Major temples on the land continue to be still closed to the Harijans."

After the end of II World War, the various\(^1\) States passed Temple Entry Legislation. The lead was given by Madras State by enacting a comprehensive Temple Entry Act. This Act made it a criminal offence for any person to prevent any Hindu from entering or worshipping at any temple to the same extent as Hindus generally. Similar Acts, varying slightly in detail were passed by most of the provincial legislatures and a number of princely States.

Besides these acts, some of the social disabilities removal Acts contained temple entry provisions; for example, Section 3 (d) of the united Provinces Act.\(^1\) Section 3 of the East Punjab Act. These Temple entry statutes, gave untouchables an enforceable right of entry in temples. The Madras state was the first to pass a comprehensive legislation in 1938, providing for the removal of social disabilities. The Act made it an offence to discriminate against 'Untouchables' not only in respect publicly supported facilities such as roads, wells, and transport, but also in regard to "any other secular institution" to which the general public was admitted, including restaurants, hotels, shops etc. Enforcement of disabilities against untouchables,(at times described as Harijans, excluded classes, backward classes or depressed classes) "was out lawed in regard to public facilities. Violations were made criminal offences and cognizable in most cases. The Orissa and U.P. Acts were the only ones in which offences were not cognizable.

\(^1\) Madras Temple Entry Authorisation Act; 1947 (V of 1947).
Thus when the Constitution was enacted in 1950, the customary discriminatory practices in respect of public facilities or Hindu temple, perpetuated against 'Untouchables' for centuries were transformed into statutory offences throughout the Country. Many Removal of Civil Disabilities Acts were passed, but in practice even today Harijans are not allowed to enter Nathdwara temple. Even today, at the entry point of Hindu Shrine of Puri, there is written in bold letters that Harijans are not allowed to enter,¹

The Elayaperumal committee report ² adds that "Assam and Rajasthan were the only states which had not adopted any legislative measures to eradicate the social evil of untouchability". As far as union territories were concerned, the Bombay Harijan (Removal of Social disabilities) Act 1949 and the United Provinces Removal of Social Disabilities Act 1946, extended in the Union Territories of Delhi and Himachal Pradesh respectively. According to a constitutional provision, the Acts which were in force till the enactment of the Constitution were to remain in force and thus continued to remain in their respective areas of operation.

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¹ June j a P.C., "Central India Law Quarterly" (Vol.V April-June, 1992), Part-II, P. 220.
² Infra Chapter,
The extreme economic dependence of the rural ignorant, illiterate and landless 'Untouchables' on the rich caste Hindu landlords, made the matters worse for them whenever they tried to acquire equality in any sphere of life on the backing of these Acts. The few cases which have gone to the courts, show that they were symbolic cases, where organised urban 'Untouchables' tried to draw the attention of all concerned to these social evils, which had remained unchecked inspite of all the legislation. The experience upto 1950, has revealed that for any legislative effort to succeed in curbing untouchability practices, not only the practices are to be outlawed but in addition steps have been taken for the educational and economic upliftment of the untouchables at a faster rate. Accordingly, the framers of the constitution, not only provided for the constitutional abolition of 'Untouchability' but also made provisions for their educational and economic upliftment. Centered around reservations many questions were raised and will continue to be raised. Why reservations? To whom reservations

There are pertinent questions in which the national stake is certainly involved as the questions fall within the domain that concerns the deprived Indian population. The questions touch not only the legal and constitutional aspects but also historical, religious, social, economic, political, educational and cultural aspects.
The freedom struggle movement of the Congress Party, a separate nation demand of the Muslim League and the Social Equality Movement of the Independent Labour Party have either singly or in combination with each other led for the happening of three events in 1947.

It is a fact that in 1947, on the Independence of India Hindus got India, Muslims got Pakistan and Scheduled Castes and Scheduled Tribes got reservations.

Reservations for Scheduled Castes and Scheduled Tribes provide not only necessary safeguards but also a means for their active participation in the national life and the political system that controls the social life of Indians. Politics undoubtedly controls economic, social and legal orders. It is a necessary phenomenon. There is a core of truth in the assertion of P. Yuddin. He said:

"If the economic order changes, the legal order changes too and political order resides on both ". According to Aristotle, politics arises from a diversity of groups and interests of traditions and aspirations within a territorial unit under a common rule. The Scheduled Castes and Scheduled Tribes represent definite interests and aspirations of their own. They need their grievances, problems, interests and aspirations to be heard and recognised so as to feel secured and represented in the decision making processes. It is the fact that repression of the Scheduled Castes is not merely a political phenomenon, it is a social and cultural process as well. Reservations
got by them are effective answers against such social and cultural repression of them. In fact reservations to the scheduled castes and scheduled tribes draw politics and society towards each other. This is therefore a very important political and social function performed by reservations.¹

It is a well known dictum that law has to operate in a complete social milieu and that the law characterizes the progress of civilization and represents the stage of development of culture. The policy of reservations adopted by the framers of our constitution is not an exception to the rule laid down by the dictum. Reservations are at once symptomatic of stunted growth of Indian civilization and her culture as also a device for the advancement and integration of the nation's one fourth population.

2.8.9. **Untouchability Definition:**

The word 'Untouchability' is neither defined in the "Untouchability" (Offences) Act 1955, nor in the Constitution of India. But in both the places, the word is used in the same style, that is, in the inverted commas. This indicates that the word has been used in the same sense in both the places. Of course, the Untouchability offences Bill in Section 2 clause (f) defined "Untouchability" as;

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1. Yuddin P., Bable and Hazzard, Soviet Legal Philosophy, (Harvard University Press, 1951), P.256
"A member of Scheduled Caste as defined in Cl(24) of Art 366 of the Constitution, and includes any other person who by custom or usage is regarded as an untouchable by any Community or section thereof;

Explanation I;

A member of a Scheduled Caste shall not cease to be such member if he resides in any locality other than the locality specified in relation to him in any public notification issued or any law made by Parliament under Art.341 of the Constitution.

Explanation II;

A member of a Scheduled Caste who has been converted from the Hindu religion shall not withstanding such conversion, be deemed to be an untouchable for purposes of this Act."

But the Joint Committee of the Parliament to which the Bill was referred did not approve of the definition of untouchability and Social 2 (f) along with the two explanations were deleted from the Act. This was perhaps because of the difficulty of a precise legal definition of the term "Uhtouchability".
But word 'Untouchable' is understood to cover different acts in different parts of India and the only common feature amongst them may be said to be the humiliation of the person who is 'untouchable'. Mahatma Gandhi coined the word 'Harijan' to name these untouchable so that the word 'Harijan' prima facie refers to an untouchable.¹

Shortly speaking "untouchability" is any disability imposed upon a person simply on the ground that he is born in a so-called low caste. There is no uniformity in the different parts of India as to who would be regarded as an untouchable. This will be evident from the fact that the list of Scheduled Castes is made State-wise in the constitution.

Untouchability obviously attaches to dirt, and not any human being as such. That persons in an unclean condition, or suffering from contagious or infectious diseases, should not be touched, except when necessary to do so in order to help them, as in the treatment of the diseased.²

Untouchability is a product of the Hindu Caste System; but racial segregation in U.S.A. or South Africa or other European Countries is virtually a form of untouchability.

The literal construction of the term would include persons who are treated as untouchables, either temporarily or otherwise for different reasons, such as their suffering from an epidemic or contagious disease or on account of social observances such as are associated with death or birth or on account of social boycott resulting from Casts or other disputes. The imposition of untouchability in such circumstances has no relation to the causes which relegated certain classes of people beyond the pale of the caste system. Such relegation has always been based on the ground of birth in certain classes. The word 'untouchable' in India has got a special meaning to classify those persons whose touch was formerly considered as pollution by Hindus of higher status and has developed historically. The untouchable position in the society was that of a rightless persons. They had all duties but no rights. The untouchables performed the unclean tasks and everything was well contrived to justify untouchability. Dr. B.R. Ambedkar has criticised the vice of untouchability in the Constituent Assembly in the following words:

"This type of untouchability among Hindus stand in a class by itself. There is nothing which can make the untouchables pure. They are born impure, they are impure while they live, they have the death of theimpure and they give birth to children who are born with stigma of untouchability affixed to them." The disabilities of the untouchable Hindu Castes were felt in the religions, social, civil and a number of other spheres in the society. The untouchables were deprived of access to temples and other religious institutions which were exclusive propogative
of higher caste Hindus. In case of pollution caused by the entry of an untouchable in a temple, he was asked to pay damages for purification ceremony of the temple. Deliberate pollution of temple by an untouchable was a Criminal Offence.

Prior to the enactment of the constitution of India in 1950, some fragmentary attempts were made to ameliorate the conditions of untouchables and to protect them from disabilities. A number of legislations were passed in different provinces and princely states prohibiting discrimination on the grounds of untouchability and steps were taken to provide lands, housing and schooling for depressed classes.

2.8.10. **Scope of the Untouchability (Offences) Act;**

The "Untouchability" (Offences) Act, 1955 came force on 1st June, 1955. The "Untouchability" (Offences) Amendment and Miscellaneous Provisions Act, 1976 came into force on 19th November, 1976, By the second mentioned Act, the previous Act has been renamed as "The Protection of Civil Rights Act, 1955".²

2. In Chatunni vs Appukutham A.I.R. 1945, Mad-232, The Court upheld the right of High Caste Hindus to exclude low caste Hindus from entering into a public temple and awarded damages for pollution caused by such an entry into a temple.
The word 'Civil Rights' has been inserted by the Act 106 of 1976, It is pertinent to note that nowhere in the body of the Act, the expression Civil Rights occurred it is only used in the title of this Act.

'Civil Rights' as defined means any right accruing to a person by reason of the abolition of 'untouchability by Art.17 of the Constitution, The given definition conveys that some rights have been accrued to the persons regarded as untouchables historically which are termed as 'Civil Rights' and as the title of the Act indicates, the Act is intended to protect such rights of these persons.

By declaration of the abolition of 'untouchability' under Art. 17 of the Constitution, the legal recognition to the practice of 'untouchability' is with-held. Consequently, the number of social and religious disabilities imposed upon the persons regarded as untouchables have been removed. The removal of such disabilities put them at par with the other Caste Hindus and the public in general/ and therefore, corresponding rights have been accrued to them. Such corresponding rights are termed as 'Civil Rights' in the Act.

The present Act is a penal enactment dealing with specific subject i.e. offences arising out of and connected with the untouchability. This Act made express provisions under Sections 3-7(A) providing punishment for the observance of untouchability in the forms mentioned therein, for e.g. preventing from entering into any place of public worship or enforcing
disability with regard to access to any shop, public restaurant and so on and these are the more common forms in which the untouchability is observed which is the matter of common knowledge and judicially noticeable.

The practice of untouchability in those common forms has got its origin in the course of historical development. With the change of times a voice was raised at the end of last century against the practice of untouchability and efforts were made to eradicate this social evil. These were the circumstances which actuated the framers of the Constitution to declare the abolition of untouchability and forbid its practice in any form. The Constitution of India enshrined the principle of social justice. In pursuance of the Constitutional provisions, this Act is enacted by the Parliament. The provisions of the Act are not confined to only Hindus and Hindu religious institutions but are equally applicable to the persons professing any other religion and other religious institutions in India. However, it is applicable to the public places and it does not transgress upon the private places or functions. The Act also does not create any new right in favour of the persons regarded as untouchables historically. The object behind this Act is that whatever is open to the public in general or Hindus generally should also be equally open to everybody including the members of the Scheduled Castes.

The Act not only provides punishment for preaching and practice of untouchability in the forms expressly made punishable but also for social
boycott and ex-communication of a person who refuses to practice untouchability.

A deep study of Hindu Social System and order would reveal that though the Hindu Society, broadly speaking is divided into two groups mainly, touchables and untouchables but the so called touchables are also divided into a number of castes, so also the untouchables. The structure of the Hindu Society is based on the principle of graded inequality. The persons belonging to one caste do observe untouchability to more or less extent in respect of the persons belonging to the other caste, though the persons of both the castes are classed as touchables, so is the case amongst the untouchables. Such practice of untouchability also came to be regarded as worst Art.17 of the Constitution is intended to abolish such practice also which is obvious from the words "its practice in any form is forbidden" employed therein. The penal provisions of this Act will be, therefore, attracted to the observance of untouchability amongst touchables as well as untouchables.

Since the Act is a Social legislation which is aimed to eradicate the practice and preaching of un-touchability in any form, it has got some special features as compared with the other penal enactments. The deterrent punishment, i.e., minimum punishment of imprisonment as well as of fine is provided which is intended to deter the people from committing the untouchability offences. In addition to the punishment of imprisonment and fine, the Magistrate is empowered to cancel or suspend the licences in certain cases under Section 8 of the Act. The
conviction under this Act also disqualifies the convict to be a member of Parliament and the State Legislatures for 6 years from the date of conviction, vide section 8 of the Representation of People Act, 1951 as amended by Act 106 of 1976. A special provision is incorporated in the Act under Section 10-A which empowers the State Governments to impose collective fine on the inhabitants of an area who are concerned in or abetting the commission of the untouchability offences. The benefit of probation offenders Act, 1958 is also barred under Section 16-A of the Act.

A novel provision is incorporated under Section 12 of the Act discarding the Cardinal Principle of jurisprudence, which shifts the burden of proof upon the accused person to some extent, in case, the complainant is a member of Scheduled Caste as defined in the Act. Sec.15 lays down the procedure for trial, Sec.16 gives over riding effect of the Act over the provisions of the other law for the time being in force, customs and usages.

There is a new provision inserted by the Act 306 of 1976, i.e., Sec. 15-A, which casts a duty upon the State Government and makes it obligatory on its part to take such measures as may be necessary for ensuring that the rights accruing from the abolition of 'untouchability' are made available to and are availed of by the persons concerned.

The section is embodied in the Act with a view to implement the provisions of the Act properly so that solemn declaration made under
Art.17 of the Constitution can be given true effect and the object of the Act may be achieved.

Scheduled Caste and Scheduled Tribe;

In 1911, an enquiry was instituted to ascertain the castes and tribes which suffered religious and social disabilities, and in the census of 1921, a mention of the 'depressed class' consisting of lower caste Hindus (untouchables) had been made. The Government of India Act 1935 referred to such group of people as Scheduled Castes, and Scheduled Tribes which had been carried over in the constitution.

Broadly speaking, the framework of Constitutional provisions, concerning the Minorities evolved by the Constituent Assembly sub-committee, which concerned particularly the Scheduled Castes and Scheduled Tribes, made the following approach:

(i) A national goal or objectives for the policies were set for the first time. There were that while protection has to be offered developmental efforts had simultaneously to be made to bring these sections into the mainstream of the national life. Certain social economic problems such as untouchability, social discrimination, practice of begger and forced labour, educational backwardness, etc. were fully recognised and the constitution allowed that these would be removed.
(ii) In case of Scheduled Tribes, while the need for special laws and the scope for these laws was clearly defined, a commitment of the grants on part of the centre to the states was made to raise the level of administration of these areas. This was step to gradually eliminate their isolation.

(iii) The reservation of the seats to be made in case of Scheduled Castes and Scheduled Tribes according to their population.¹

India has adopted the principle of social justice, so as to maintain a proper balance between individual liberty and social control in order that the freedom guaranteed to the individual may subserve the larger needs of the community and thus ensure orderly progress towards securing justice-social, economic, educational and political.

Summary

Indian social system is based on Caste. Curing the British rule, old powers and pre-rogatives were abolished; occupations and learning were rendered marginal; power and access to it were redistributed. The general features of the legal system were not articulated to a

¹. The reservation in the Legislatures was provided for limited period of ten years. This period was opposed by a number of important members
who thought that ten years was too short and Dr. Ambedkar also personally subscribed to this view. However, in the atmosphere of hope and confidence created with the dawn of freedom most of the members thought that the minorities (including the Scheduled Castes and Scheduled Tribes) could be brought to a level of equality with others thereby needing no reservation of seats in legislature etc. within that period, system of graded inequality. Legal enforcement of slavery was withdrawn. By opening new schools and colleges open to all, irrespective of religion, race and caste, the economic opportunities improved considerably. Due to poverty and illiteracy, the lower castes were kept away from the protection accorded by the laws in the beginning.

Slowly schools were opened by reformers by missionaries and by the government. The changes under the British rule gave scope to self-improvement and advancement in the lower castes. The National Congress also gave importance to improve the condition of the depressed classes. In the south the Non-Brahmin movement was started in the beginning of 19th century. It gave rise the strength to the Backward Classes. Non-Brahmin demands for a greater share of political representation were quickly recognised by the British.

The Legislature for first-time took an interest in their problems. The illegality of denying access to schools, wells and roads was declared in legislative resolutions which were honoured largely in the
breach. M.K. Gandhi and Dr. B.R. Ambedkar took interest to provide constitutional protection to the untouchables.

Later on at the end of II World War, various States passed Temple Entry legislation, providing for the removal of social disabilities against the untouchables. Untouchability was abolished under Art.17 of the Indian Constitution. Finally to protect the Untouchables from the Disabilities untouchability (offences) Act 1955 was enacted by the Government of India, Penal provisions were incorporated in the Act. The deterrent punishment of imprisonment as well as of fine is provided which is intended to deter the people from committing the untouchability offences.